

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. 3:12-CV-02265-SI
)
v.) February 18, 2014
)
THE CITY OF PORTLAND,) Portland, Oregon
)
Defendant.)
) Volume 1

FAIRNESS HEARING
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL H. SIMON
UNITED STATES DISTRICT COURT JUDGE

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1 (February 18, 2014)

2 P R O C E E D I N G S

3 (Open court; counsel present:)

4 (Section 1, Court Reporter Dennis Apodaca.)

5 THE COURT: Good morning.

6 COUNSEL: Good morning.

7 THE COURT: I would like to begin by welcoming,

8 not only the parties, but also members of the public who

9 are here. This is the time and place scheduled for the

10 fairness hearing in the case of United States of America

11 versus City of Portland, Case No. 3:12-cv-02265-SI.

12 Before I begin with some substantive comments of

13 my own, as I said, I want to welcome everyone, but I also

14 want to ask you if you have a cell phone or pager, please

15 turn them off, or at least to the silent mode. Under

16 courthouse rules that I do not have the authority to

17 modify, there may not be any audio or video recording or

18 any photographs taken in the courtroom.

19 We will prepare an official written transcript,

20 and that will be available to the public. Let me also

21 ask, and I think we already have the invitation extended,

22 but let me reiterate. If we have any members of the media

23 here who are not planning to testify, you are welcome to

24 come sit in the jury box. I want to make sure we have

25 enough room for everyone who wants to testify to sit back

1 there. So if you are a member of the media, and you would

2 like to sit in the jury box, I invite you to do so at this

3 time, and you are welcome to come and go as you wish.

4 On the positive side, the chairs are more

5 comfortable than the benches. On the negative side, most

6 likely, when the speakers speak, and they speak from the

7 podium, their backs will be to you. That's the trade-off.

8 I leave it to your hands as to what you wish to do.

9 By the way, if the courtroom does get too

10 crowded, and right now I think we are almost at full

11 capacity, but if the courtroom gets too crowded, we have

12 arranged to have closed-circuit television of these

13 proceedings down the hall in Judge Haggerty's courtroom,

14 Courtroom 13A. You are welcome to get up, leave this

15 courtroom, watch from Judge Haggerty's courtroom, if you

16 wish. If there is room back in this courtroom, you are

17 welcome to come back.

18 I would ask if it gets too crowded in here, I

19 would ask if there are any law clerks or judicial externs

20 that work in the building here to observe these

21 proceedings, if it gets too crowded, please give up your

22 seat for someone who is here to testify, and you can go

23 watch the proceedings by closed-circuit in

24 Judge Haggerty's courtroom.

25 Now, if you do get up and leave periodically,

1 and we're going to be taking a few breaks, but not
2 particularly long ones and not particularly often. If you
3 feel that you need to take a break, you are more than
4 welcome to do so at any time you want. You don't need to
5 ask. Just get up quietly and feel free to leave the
6 courtroom and take your break. There are restrooms
7 outside. There are water fountains outside. All I would
8 ask is that you be courteous to anyone who is providing
9 testimony.

10 You will see that most of the testimony will be
11 provided from the podium that is here in the well of the
12 courtroom. We set it up there so that the closed-circuit
13 camera can also make sure that we can have the image of
14 the person testifying projected in Judge Haggerty's
15 courtroom.

16 Now, if you would like to provide testimony --
17 members of the public, I am going to be hearing first from
18 the attorneys, and I will explain that in a few minutes.
19 But if you are from the public and you would like to
20 provide testimony at today's hearing, please ensure that
21 you have signed in at the desk located immediately outside
22 of this courtroom, on this floor, immediately outside
23 those doors.

24 Even if you have previously told us through your
25 written submissions that you would like to testify, I

1 would like to make sure that we know that you are here.
2 So, please, if you haven't signed in at the desk yet and
3 you want to testify today, please do so at your earliest
4 convenience.

5 As I said, it is my desire to hear from everyone
6 who wishes to speak today, if it is reasonably possible to
7 do that, given our time constraints. I am willing to stay
8 late if we need to. Now, if it is not possible to hear
9 from everyone today, I am prepared to continue the hearing
10 into tomorrow morning if we have to do that.

11 But in order to try to hear from as many people
12 as we can today, as you know, I have placed time limits on
13 the testimony for everyone except the four parties. So
14 organizations that are seeking to testify are limited to a
15 maximum of three witnesses of up to ten minutes each.
16 Individuals seeking to testify are limited to five minutes
17 each.

18 We will hold up a yellow card. As a matter of
19 fact, could you hold up the yellow card toward the podium
20 to let you know when there is one minute left, and we will
21 hold up a red card when time has expired. If you are in
22 the middle of a sentence, you may complete your sentence.
23 You don't have to stop in the middle of a syllable, but
24 please, if you see the red card, as a courtesy to everyone
25 else who wants to testify, please stop talking and wrap up

1 your comments when you see the red card.

2 By the way, if you really, really need more time
3 than has been allocated to you, I am prepared to let you
4 have it, but at the end of the line. So once you have
5 completed your comments, if you still have more that you
6 need to say, just let me know, and I will tell you, well,
7 once everyone who wants to speak has had an opportunity
8 and a turn to speak, then I will hear from anyone who
9 wants to continue. Please, there is no need to repeat
10 yourself. We are taking down every word that is said in
11 here. I will be taking notes. But if there is more that
12 you need to say, we will give you the opportunity to do
13 it.

14 Let me now offer some brief comments by way of
15 background and a little bit of substantive context, and
16 then I will hear from the parties.

17 On September 12th, 2012, the United States
18 Department of Justice, which I will be referring mostly to
19 as the "Justice Department," acting through both its Civil
20 Rights Division and the U.S. Attorney's Office for the
21 District of Oregon, delivered to the mayor of Portland and
22 to the chief of police the Justice Department's written
23 findings from its investigation of the Portland Police
24 Bureau.

25 The investigation began more than one year

1 earlier when the Justice Department announced on June 6th,
2 2011 that it had opened an investigation to consider
3 whether Portland Police Bureau officers engaged in a
4 pattern or practice of using excessive force with a
5 particular focus on the use of force against people with
6 mental illness or in mental health crisis.

7 The Justice Department's findings were set forth
8 in a 42-page letter, single spaced. As the Justice
9 Department concluded in its report, its investigation
10 reveals reasonable cause to believe that the Portland
11 Police Bureau engages in a pattern or practice of using
12 excessive force in violation of the Fourth Amendment to
13 the United States Constitution and in violation of federal
14 law. The Justice Department identified several remedial
15 measures that needed to be implemented to correct the
16 constitutional and statutory deficiencies identified in
17 the report.

18 On December 17th, 2012, approximately three
19 months after issuing its written findings, the
20 United States filed a civil complaint, a civil lawsuit, in
21 federal court against the City of Portland and this
22 matter. That case was assigned to me.

23 As alleged in the complaint, pursuant to an
24 extensive investigation of the Portland Police Bureau
25 conducted by the United States Department of Justice, the

United States has determined that the Portland Police Bureau engages in a pattern or practice of using unlawful force against individuals with actual or perceived mental illness in violation of their constitutional rights.

In its complaint, the United States, the Justice Department and the U.S. Attorney's Office and the Civil Rights Division requested both declaratory relief and injunctive relief -- that is, court-ordered -- all under Title 42 United States Code §14141 and 3789d(c)(3).

Now, on the same day that lawsuit was filed, the United States, as the plaintiff, and the City of Portland, as the defendant, filed a proposed settlement agreement and a joint motion asking the Court to approve the proposed settlement agreement and to conditionally dismiss the lawsuit with the Court retaining jurisdiction to enforce the terms of the settlement agreement.

Now, rather than granting that joint motion, the Court first provided an opportunity to any interested person or organization to petition to intervene in this lawsuit, and two petitions were received. One came from the Portland Police Association, which originally objected to the proposed settlement. The Court granted the motion to intervene by the Portland Police Association. A second motion to intervene was filed by the Albina Ministerial Alliance Coalition for Justice and Police Reform, the AMA

Coalition.

The AMA Coalition also objected to the proposed settlement agreement, but for reasons different than the reasons asserted by the Portland Police Association. Although the Court denied the AMA Coalition's motion to intervene, I did grant the AMA Coalition the status of enhanced amicus curiae, enhanced friend of the Court.

The Court also stated that I intended to hold a fairness hearing before ruling on the motion to approve the settlement agreement, during which, not only the plaintiff, the defendant, the Portland Police Association and the AMA Coalition would be heard, but at which the public generally could provide comments both in written form and in oral testimony on whether or not the settlement agreement should be approved by the Court.

But before holding the fairness hearing, I encouraged all four parties, the United States, the City, the Portland Police Association and the AMA Coalition, to meet with a mediator to see if they could resolve their differences among themselves. The four parties all agreed to work with the recently retired chief justice of the Oregon Supreme Court, the Honorable Paul De Muniz as their mediator.

After several months of meetings and discussions, the parties announced to the Court that they

had resolved their differences. On December 23rd, 2013, about two months ago, the Portland Police Association, as the intervenor, filed its notice of withdrawal of objections to the proposed settlement agreement, and one week later, on December 30th, 2013, enhanced amicus, AMA Coalition, filed its notice informing the Court that the AMA Coalition does not object to the entry of the proposed settlement agreement and will continue to advocate for the implementation of reforms that the AMA Coalition supports.

The Court is very appreciative of the hard work, the dedication of the parties, their counsel, and the mediator, former Chief Justice Paul De Muniz in getting us to this stage of the proceeding, but we're not done.

Now, before the Court is the parties' joint motion asking the Court to approve the settlement agreement and retain jurisdiction to ensure that its terms are enforced.

Now, the question before the Court is solely whether to approve or disapprove the settlement agreement and to retain jurisdiction to enforce its terms.

Now, a settlement agreement is contractual in nature. It is an agreement among the parties that they desire and expect all parties to the agreement will perform. In the event that one side breaches a contract or breaches a settlement agreement, a new lawsuit for a

breach of contract oftentimes or at least may follow.

However, here, where the parties have asked the Court to retain jurisdiction to enforce the terms of their settlement agreement, they are in essence asking the Court to enter the functional equivalent of a consent decree, and that has the force of law and is generally enforceable, much like any other judgment or court order or decree.

Now, for that reason, consent decrees and similar orders cannot be approved without due consideration by the federal district court inquiring whether the proposed resolution of the dispute is lawful, fair, reasonable, and adequate; the result of arm's-length bargaining and not the product of fraud or collusion.

Because the parties today are asking the Court to engage in that sort of judicial act, this involves more than simply a matter of agreement among the parties; and therefore, the Court must make an independent determination of whether the proposed settlement agreement is fair, reasonable, and adequate.

For that reason the Court seeks input from all interested parties, both the parties to the lawsuit, but also all potentially affected persons, including both organizations and individuals.

Now, the question of whether this proposed

1 settlement agreement is fair, reasonable, and adequate
2 must be assessed in light of what is alleged in the
3 complaint. A Court is not a roving commission to improve
4 society or to even solve problems in society that have not
5 been brought before the Court in a legal action.

6 In the civil context in which we are in right
7 now, an action begins with and is shaped, informed, and
8 limited by the pleadings; the answer, the complaint, the
9 answer, the counterclaims, and any defenses set forth in
10 the pleadings.

11 It is in light of the allegations alleged in the
12 complaint brought by the United States, filed in this
13 case, that I must base my determination on whether the
14 proposed settlement agreement is fair, reasonable, and
15 adequate to redress the matters raised in the complaint.

16 On December 19th, 2013, about two months ago,
17 the Court scheduled today's fairness hearing and invited
18 all four of the parties, as well as all members of the
19 public, to submit comments, either in advance of today's
20 hearing, or to come and testify and provide evidence at
21 today's hearing, or both.

22 So in addition to the four parties, we have
23 received to date written comments or requests to testify
24 in person, or both, from more than 60 people and
25 organizations. I have also received videotaped testimony

1 from five people who provided their names, and one person
2 who chose to provide recorded testimony anonymously.
3 Before today's hearing, I have read what people have
4 submitted in writing, and I have watched all six
5 videotaped testimonies.

6 Now, later this morning we will be taking live
7 testimony from the witnesses and others who want to
8 provide comments about the proposed settlement agreement.
9 Before we do that, I want everyone to understand that the
10 question before me is whether to approve or disapprove the
11 proposed settlement and to take and retain jurisdiction to
12 enforce that settlement agreement.

13 The settlement agreement is a compromise that
14 has been reached among the parties. I do not have the
15 legal authority to order that any specific changes be made
16 to the settlement agreement, even if I thought that such a
17 change might be a good idea. My legal authority consists
18 only in the power to approve or disapprove the proposed
19 settlement, and if I retain jurisdiction, to ensure that
20 the parties live up to their commitments expressed in that
21 proposed agreement.

22 If I conclude after this hearing and after
23 reading -- well, not just this hearing. I will explain in
24 a few moments that there will be one more opportunity for
25 parties to submit comments. But if I conclude, after all

19

1 the fairness hearing procedures that have been followed,
2 after hearing everyone's comments and listening to what
3 folks have to say, if I conclude that the settlement
4 agreement is fair, reasonable, and adequate, it is my
5 responsibility to approve it.

6 If, however, I conclude, after hearing and
7 reading everyone's comments, that the proposed settlement
8 is not fair, reasonable, and adequate, it is my duty to
9 disapprove it. If I approve the proposed settlement, I
10 will retain jurisdiction to ensure that its terms are
11 being met.

12 If I disapprove the proposed settlement, then
13 there will be no settlement agreement right now, and the
14 lawsuit continues. What happens then is impossible
15 accurately to predict with any confidence. That's simply
16 the nature of any lawsuits and litigation.

17 After hearing and reading everyone's comments at
18 today's fairness hearing, I will allow the four parties to
19 have until March 11th to submit any post-hearing responses
20 to what has been received and heard in this fairness
21 hearing. If they want to make additional proposed changes
22 to the settlement agreement, they can do it. If they want
23 to clarify what things mean or what their expectations
24 are, they can do it. If they want to respond to any
25 substantive or procedural comments they hear in the

20

1 fairness hearing, they may do it, up until March 11th.
2 After that date, I will review all of those comments and
3 then announce my decision regarding the proposed
4 settlement agreement.

5 Now, we are going to begin today's hearing with
6 opening remarks by the parties. We will start with the
7 plaintiff, the United States Justice Department, and its
8 witnesses, followed by the City of Portland. After that,
9 I will invite the Portland Police Association to make any
10 comments or introductions that it may wish to make, it
11 doesn't have to, followed by the AMA Coalition to make any
12 presentation, comments, present any witnesses that the AMA
13 Coalition wants to make. It doesn't have to, but they
14 will all be welcome to.

15 Now, from time to time I will let you know who
16 we are planning to hear from next so that you all in the
17 public who want to testify can plan your schedule and your
18 timing. But for right now, from what I have been told, I
19 expect that about the next hour to hour and a half will be
20 taken primarily by the parties, after which I will then
21 let you know who will be coming up next, and then we will
22 take a very short recess.

23 At this time I invite comments and testimony
24 from the plaintiff, the United States of America.

25 MS. JONES: Thank you, Your Honor. My name is

Michelle Jones, I am an attorney for the United States Department of Justice in the Civil Rights Division, the Special Litigation Section.

I would like to start by thanking the Court for giving us this opportunity, as well as to thank all the community members that are gathered here today, to share their thoughts on this important settlement agreement. This agreement is for you.

Your Honor, the United States and the City of Portland have negotiated a fair, adequate, and reasonable settlement agreement that resolves our finding that the Portland Police Bureau has engaged in the use of excessive force against people with mental illness. The settlement agreement requires the City to bring its policies, training, and officer accountability mechanisms into conformance with constitutional mandates and best police practices.

THE COURT: One moment.

Mary, is her microphone on?

All right. Can everyone hear all right?

THE AUDIENCE: No.

THE COURT: I don't hear it.

DEPUTY COURTROOM CLERK: Maybe it got unplugged.

THE COURT: Now I hear it.

MS. JONES: Shall I start over?

THE COURT: I don't think you need to. It is up to you; whatever you wish.

MS. JONES: Well, I wanted to thank the community again for being here and sharing your thoughts on the settlement agreement. We are very grateful to have you here, and we want to hear from all of you.

The settlement agreement is fair, adequate, and reasonable, and it requires the City to bring its policies, training, and officer accountability mechanisms into conformance with the constitutional mandates as well as best police practices.

This will lead to significantly improved police services for the people of Portland. The City has also agreed to remedies that extend beyond the United States' findings, including the creation of a Community Oversight Advisory Board to improve community policing and data collection efforts to address allegations of discriminatory policing. DOJ will serve as the monitor of this agreement and will not rest until the City comes into full compliance.

This agreement was crafted with significant public input, as well as considerable time and energy on behalf of the parties, and was approved by unanimous City Council vote following two public hearings on the matter.

The intervenors in this case, the Portland

Police Association and the Coalition for Justice for the Albina Ministerial Alliance, who wanted to oppose entry of this agreement, now stand with us, seeking its approval.

If the Court rejects this agreement, there is no guarantee that another will replace it, and all of these hard-won gains would be in jeopardy.

Today, I will describe for the Court and the community members gathered here the pivotal role that the community played in shaping the settlement agreement that is presently before the Court. My colleague, Jonas Geissler, will describe the correlation of the settlement agreement to our findings, and my other colleague, Adrian Brown, will present the testimony of our police practices expert, Chief Chuck Gruber.

We will also present the testimony of Dr. Maggie Bennington-Davis, the chief medical and operating officer for Cascadia Behavioral Healthcare in Portland, and Chris Bouneff, the executive director of the National Alliance of Mental Illness, known as NAMI of Oregon.

DOJ's investigation of PPB and the resulting settlement agreement are of great import to the people of Portland. Throughout the investigation and settlement negotiation process, the United States made it a priority to engage the Portland community to ensure that the investigation and resulting settlement were as thorough

and responsive to community needs as possible.

Altogether we heard from more than 1,000 community members, beginning with the widely attended public forum in the jury room of this building on June 6th, 2011, the day we opened our investigation.

We also held numerous 101 meetings, town hall meetings, open conference calls, and have been in communication with community members through a dedicated e-mail and phone line. We have met on repeated occasions with numerous community groups, including the Albina Ministerial Alliance, the Urban League, the ACLU, advocates for people with mental illness, including family members and people with lived experience, among others.

The level of sustained civic engagement that the people of Portland have demonstrated throughout the investigation and settlement negotiation process is unprecedented, and we have the community to thank for many of the innovative ideas found in the settlement agreement.

We announced the findings of our investigation on September 13, 2012 and simultaneously released a statement of intent, which manifested the parties' intention to enter into a court-enforceable agreement to address the United States' findings.

We ask the Court to accept into evidence this statement of intent as Exhibit 1.

THE COURT: Received.

MS. JONES: We immediately began reaching out to the public, including members of the African-American community, mental health advocates, and legal advocates to solicit input on ideas for specific remedial measures. We hosted two conference calls in early October to hear from community members, leaving the line open for two hours each night. During these calls we received more than a dozen additional comments concerning what the people would like to see in the settlement agreement. All of these comments and suggestions helped shape the settlement agreement.

On October 26, 2012, U.S. Attorney Amanda Marshall, then-Mayor Sam Adams, and PPB Chief Mike Reese announced a proposed settlement agreement for City Council's consideration and released a copy of the proposed agreement to the public.

Between October 26th and November 1st, 2012, the date of the first City Council hearing on the matter, DOJ received and reviewed numerous written comments on the agreement and held dozens of individual meetings to discuss the proposed settlement before watching approximately three hours of public testimony at the City Council hearing.

After considering all public comment, DOJ and

the City revised portions of the settlement agreement to address concerns raised regarding the use of force, training, officer accountability, and community oversight and engagement provisions of the settlement agreement and resubmitted the agreement to City Council.

Your Honor, we ask the Court receive into evidence as Exhibit 2 this red-line document, which shows the changes that were made as a result of public input.

THE COURT: Received.

MS. JONES: I will give 3 as well at the same time. We ask the Court to accept Exhibit 3, a list of the specific changes that were made to the settlement agreement.

THE COURT: Exhibit 3 is received.

MS. JONES: This is a list of all the changes made to the settlement agreement in between the two City Council hearings. We can make this available to the public if they are interested in seeing this closer.

There were more changes that were made, and then there is also a third page of additional changes that were made. This is a demonstrative, but we are happy to provide the public or anyone interested with a copy of the specific document.

City Council held another hearing on November 8th, 2012 to consider the revised settlement

agreement and heard an additional two hours of public testimony. At the conclusion of this hearing, City Council voted unanimously to adopt the proposed amendment, as submitted, and in a second and final vote on November 14, 2012, unanimously approved the amended settlement agreement.

The parties undertook a difficult balancing act to craft an agreement that fully resolves the United States' findings while incorporating the public's will, to the extent possible. While many of the community's suggestions were incorporated; admittedly, some were not. Nevertheless, every single suggestion was heard, discussed, and considered.

So why couldn't we incorporate all of the suggested changes? Some were inconsistent with the standards of best police practices. Some, the City could not agree to without violating police officers' collective bargaining rights. Some were beyond the scope of the United States' findings or jurisdiction under 42 U.S.C. §14141, which is the statute that enabled us to bring this investigation.

Some suggestions are better addressed in the policies drafted pursuant to the settlement agreement rather than in the settlement agreement itself. Other suggestions simply were not feasible, due to the issues

being outside the City's jurisdiction or because of the contours and limits of state and federal law.

It also bears noting, as Your Honor so eloquently mentioned, that this settlement agreement differs from a court order issued after a finding of liability whereby the Court could order a defendant to do things without its consent. Rather, this agreement is a negotiated document that addresses the United States' findings, in addition to other areas of concern.

At the end of the day, this Court will be called upon to answer whether the agreement is fair, adequate, and reasonable, and it is. It is fair because it remedies the United States' constitutional findings while incorporating numerous community suggestions, but does not exceed the limitations of the United States' jurisdiction or the rights of the defendant.

It is adequate because the agreement addresses each of the United States' findings and brings the City into conformance with, not just constitutional standards, but best police practices.

Lastly, it is reasonable. The City has already begun taking crucial steps towards coming into compliance with the agreement and is eager to move forward in working with the community in the next steps, and it is inherently reasonable to require the City to take such necessary

steps to ensure compliance with the Constitution.

While some may wish this agreement went further, we ask the public and the Court to not let the perfect be the enemy of the good. This settlement agreement brings about significant positive change to the PPB for the benefit of the people of Portland and holds the City accountable to make the changes.

If this Court approves the settlement agreement, it will then become effective for the first time, and the United States can transition to the important role of serving as monitor, yet there will still be opportunities to observe its efficacy and make changes as necessary.

The settlement agreement is a first step forward and a good step forward, and we urge the Court to enter it as an order without further delay.

Thank you, Your Honor.

THE COURT: Thank you, Ms. Jones.

MR. GEISSLER: Good morning, Your Honor.

THE COURT: Good morning.

MR. GEISSLER: I am Jonas Geissler on behalf of the United States. I am one of the civil rights lawyers from Washington, D.C. I have had the pleasure to come out to Portland for a few years now.

Your Honor, for the sake of today's discussion before the Court, we seek to outline the relationship

between our findings and the remedies contained in the settlement agreement. For those among today's audience who have not had the opportunity to read the full settlement agreement and findings letter, today's discussion should give us all a common understanding of the documents before the Court.

This is a constitutional claim based upon the use of force governed by the U.S. Constitution's Fourth Amendment. 42 U.S.C. §14141 gives the United States the standing; that is, the right to sue on behalf of the United States, but does not create any additional rights. We're not permitted to seek monetary damages. We seek only injunctive relief here that is a series of changes to ensure constitutional compliance.

Your Honor has made reference to the findings letter. May I approach the bench, Your Honor?

THE COURT: You may.

MR. GEISSLER: If it please the Court, I will provide all the exhibits at once. Thank you.

Your Honor has made reference to the United States' findings letter. The facts that have been uncovered during the investigation led to three separate findings: That reasonable cause exists that the PPB uses unnecessary or excessive force against people with actual or perceived mental illness; that PPB uses unjustified

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ECWs; that is Tasers, against people with mental illness; and a greater force than necessary is used when there is minor government interests.

In the absence of an adequate community health system, Portland police officers are asked to be the first responders in often difficult situations. However, this does not permit unconstitutional uses of force, but allows us rather to gauge the context of the findings within the broader scope of services that are offered or not offered within Portland.

Your Honor, I ask the Court receive into evidence Exhibit 4, which is our findings letter, and Exhibit 5, which is a letter from the United States Civil Rights Division along with the U.S. Attorney's Office, to the State of Oregon regarding the current state of community mental health services within the state of Oregon.

THE COURT: Those exhibits will be received.

MR. GEISSLER: Thank you, Your Honor. We did not reach additional findings, but we did make additional recommendations. As we shall see, the settlement agreement imposes additional controls on the use of force and accountability, remedies that not only help eliminate the unconstitutional use of force against individuals with mental illness, but also against all people against whom

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force might otherwise be used.

The first finding, as Your Honor has pointed out, is force against individuals with mental illness. The remedies in the settlement agreement are designed from these sections, Your Honor, to limit the use of force within constitutional confines and more.

DOJ has to approve the force policies from the PPB. PPB must publicize its policy changes, and through the collaborative agreement with the City, the United States, and the AMA Coalition, the City must seek the specific input from the AMA Coalition on its force policies as well.

The PPB must not only limit the use of force and single instances, but its policies, as approved by DOJ during the course of the agreement, would require the assessment of force over the scope or span of an officer's career to ensure that the officers are not resorting to force too often.

The second finding is with regard to the use of Tasers. In our settlement agreement, these provisions respect the Taser use. However, Taser use also must be subject to the general-force policy. That is to say that, even if there are uses of Tasers, they must be reasonable within the policy on use of force generally, and then there are more restrictive prohibitions on Taser use above

1 and beyond that in these provisions. PPB must also audit
2 its Taser use pursuant to our settlement agreement.

3 The third finding regards use of force when
4 there are low government interests; the remedies in our
5 proposed settlement agreement in these paragraphs. The
6 agreement emphasizes the need for de-escalation and
7 disengagement in general. There are times that force will
8 be needed, but the hope and goal of the agreement is that
9 disengagement and de-escalation will lead to lessening
10 uses of force in general.

11 Just how effective can the remedies in these
12 three findings be? Your Honor, we have offered, with the
13 stipulation of authenticity and admissibility from all of
14 the parties, Exhibit No. 6, which is a letter from Sheriff
15 Demings of the Orange County, Florida Sheriff's Office.

16 Sheriff Demings presided over a large
17 metropolitan law enforcement agency during a DOJ-monitored
18 agreement. During the course of the agreement, as
19 Sheriff Demings points out, OCSO's Taser use reduced from
20 33 uses per month to three uses per month, a drop of
21 greater than 90 percent over the course of the DOJ
22 agreement.

23 THE COURT: Exhibit 6 will be received.

24 MR. GEISLER: Thank you, Your Honor.

25 Sheriff Demings notes a cultural and

1 institutional change over the course of implementation of
2 a DOJ agreement.

3 We also noted, Your Honor, systemic issues that
4 do not rise to the level of findings but that impact the
5 findings. Mental health specialization is that first
6 systemic issue.

7 Section V of our settlement agreement,
8 Your Honor, outlines aspirational goals for the City in
9 working with the county and the State on community-based
10 mental health services. Those jurisdictions' agencies may
11 be beyond the current reach of this particular case, but
12 all recognize that the ultimate need for additional
13 solutions resides, in part, outside of PPB.

14 Portions of the settlement agreement address
15 Portland's 911 system -- that is, BOEC -- with the goal
16 that some calls end in the provision of services and
17 interventions rather than a police interaction.

18 When the police do respond, the settlement
19 agreement calls for the use of a crisis intervention, a
20 broad base of basic training for all officers and a deeper
21 training on a group of volunteer officers accompanied by
22 mental health workers under what is known as the
23 Memphis Model, specifically required by the settlement
24 agreement. The City, we believe, will give a more fulsome
25 description of what is currently underway in the work of

1 the behavioral health unit of the PPB.

2 The next systemic issue, Your Honor, is
3 supervisory review. An integral part of force use is its
4 management. The settlement agreement requires on-scene
5 reviews of force uses and audits to ensure the fidelity of
6 the force used to the policies and review policies that
7 follow.

8 Corrective action is the third systemic issue.
9 Portland has a high level of citizen involvement in its
10 officer accountability systems. The entire system,
11 however, has taken so long to reach resolution that it has
12 undercut its own effectiveness. The settlement agreement
13 requires timely investigations, and this speaks to
14 specific critiques. The settlement agreement specifically
15 acknowledges that deadlines might have to go through a
16 period of adjustment in trying to reach the goal of those
17 timely investigations.

18 The settlement agreement also acknowledges that
19 there is a difficulty in the balancing between compelled
20 statements by officers and the right against
21 self-incrimination; i.e., the 48-hour rule and
22 after-action walk-throughs. But the settlement agreement
23 specifically requires such walk-throughs and specifically
24 reserves the abilities of the parties to continue to work
25 together and with the district attorney to continue to

1 work on that 48-hour rule.

2 The settlement agreement requires the City to
3 develop a plan within 120 days, to have meaningful,
4 independent investigations, by IPR.

5 The settlement agreement requires administrative
6 investigations for all excessive force allegations. To
7 accomplish this, in part, it makes changes to the Citizen
8 Review Committee, or the CRC. It gives the CRC specific
9 authority to require further investigation and expands the
10 CRC membership with a specific goal of permitting a CRC
11 member to have access to the Police Review Board, PRB;
12 that is, the administrative intermediate process on the
13 way to discipline.

14 Also, the settlement agreement, along with the
15 agreement with the PPB and the City, requires a
16 disciplinary matrix that now provides an objective guide
17 for responses, from minor incidents all the way through
18 termination.

19 There were additional community concerns;
20 namely, medical care and community distrust that we
21 outlined in our findings letter. Even though we did not
22 find evidence to support full constitutional findings, we
23 negotiated remedies for these very important provisions.
24 The settlement agreement formalizes a requirement to
25 provide medical care, to train on the provision of medical

care, and to audit the provision of medical care.

The settlement agreement also contains extensive provisions aimed at the connection between the community and the Police Bureau. The Community Oversight Advisory Board, or COAB, will be the community board with the responsibility to survey the community and to use data gathered to create a community engagement plan.

The COAB came about specifically from a suggestion by one of the community members here today from Hardesty Consulting. Moreover, the agreement requires tracking of data on the interactions between police and the community. Such data can be used to inform discussions on community-based policing and specifically on non-discriminatory policing going forward.

Implementation of the agreement requires mechanisms of its own. Those are set forth in these numerous paragraphs. There is a monitor to this agreement. DOJ is the monitor. DOJ approves policies, collects data, and makes qualitative assessments on compliance.

The agreement is also subject to continuous public oversight. Under the agreement, the City must make available publicly all audits and reports conducted under the agreement. The City must also be subject to public comment policies drafted for the agreement.

The City, outside of the police bureau, must also hire the Compliance Officer/Community Liaison, the COCL. The COCL will be an integral part of the community connection between the COAB. The AMA Coalition will assist the City in the formation of the COCL job listing.

The COCL will coordinate the meetings of the COAB, and even though DOJ is the monitor, COAB's reports and data can be used by all the parties to understand compliance and the community concerns. In other words, a factual record created by the community.

The entire process in this case, the investigation, the suggested remedies, the participation in the accountability systems, the outreach, the engagement plan, and the oversight for implementation, presents a far greater role for community involvement in this case than in similar cases across the country.

Portland's high level of community participation is unprecedented. It is a model for going forward for other cities.

I thank the Court, and I thank the community for its time.

THE COURT: Thank you, Mr. Geissler.

MS. BROWN: Thank you, Your Honor.

The United States would like to present Mr. Charles A. Gruber.

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THE COURT: Come forward. Ms. Brown, do you want the witness sworn in?

MS. BROWN: No, I don't think.

THE COURT: I don't think it is necessary.

Welcome. You may be seated.

Let me inform the witness and all counsel, I have been told that the overflow room, Judge Haggerty's courtroom down the hall, is now filled almost to capacity. They are going to be able to see what is occurring in this room and hear, but only if we all speak into the microphone. So I would ask you to speak into the microphone there so the other room can hear you, as well as this room.

I will also inform the other room right now that due to technological limitations, although you can see and hear the witnesses and those who testify, we are unable to also simultaneously display any of the graphics that have been presented. I don't think there will be very many graphics from time to time. The key is to hear the witnesses and see them.

You may proceed.

MS. BROWN: Thank you, Your Honor.

In the interest of time, I am going to briefly introduce Mr. Gruber before I start asking him questions for him to answer. As part of that introduction, I do

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have Mr. Gruber's curriculum vitae, which we have marked as Government's Exhibit 7 and provided to counsel for the Court's consideration.

THE COURT: It will be received. Please do summarize, for the benefit of everyone who doesn't have that document, Chief Gruber's background.

MS. BROWN: Thank you, Your Honor.

For the Court, counsel, and for the members of the public, Chuck Gruber is a retired police chief. He served almost 40 years as a law enforcement officer and served as a chief for almost 35 years. He served as a chief in Quincy, Illinois, Shreveport -- I am sorry --

THE COURT: Louisiana.

MS. BROWN: -- Louisiana and also Elgin and South Barrington, Illinois as well.

Mr. Gruber also served as President of the International Association for the Chiefs of Police. During his service with the IACP, he began a Professional Standards Committee, and he also started the Civil Rights Committee, which was the first time that that organization, in its 120-year history, had a Civil Rights Committee. That committee is still an active committee today.

Mr. Gruber has also taught classes all over the country to police supervisors on organization

1 accountability as well as police management. He has also
2 published a guide to civil rights compliance, which is
3 used as a guide for police officers around the country.

4 Mr. Gruber has also served as a monitor in the
5 Oakland, California police investigation involving a
6 private plaintiff, and he also has served as a police
7 practices expert, not only currently in the Virgin Islands
8 for the United States Department of Justice, but he has
9 served on numerous investigations on behalf of the
10 United States Department of Justice since 2001.

11 BY MS. BROWN:

12 Q So, Chief Gruber, with all of your history and
13 background, have you ever performed any reforms of the
14 departments that you've served while you served as chief?

15 A Yes.

16 Q If you could explain what types of reforms you were
17 involved with in the various police departments where you
18 served as chief.

19 A The type of police chief that I was, I was what was
20 known as a reform police chief. I normally went into
21 police departments that were having trouble, corruption,
22 force trouble. It varied.

23 When I would take over, I would design a plan to
24 attack the problems that were in the department, and then
25 work over a number of years to implement that plan in

1 order to bring about both a cultural and constitutional
2 behavior for the organization, which met all of those laws
3 and good police practices.

4 Q Did your reforms ever include dealing with police and
5 community race relation issues?

6 A Yes.

7 Q Can you give an example of what you dealt with in
8 Shreveport specifically with regard to police community
9 race relations?

10 A Shreveport was a tinderbox at the time I went there,
11 which would have been 1986, 1987, and it was undergoing a
12 transformation of change within the community. The police
13 department had what I would determine as institutional
14 racism. I said that publicly when I was its police chief
15 and set about bringing about significant changes to
16 incorporate practices, which would identify and eliminate
17 institutional racism in the police department itself.

18 Q I would like to talk with you about your work of
19 community policing as a chief that did conduct reform.
20 Can you talk about what innovations you took in community
21 policing.

22 A Well, community policing -- if properly implemented,
23 community policing is a strategic project that will allow
24 the department to become a part of the thinking process of
25 the community so that the community and the department are

1 thinking in the same way about how policing will be
2 applied to their families and to their neighborhoods.

3 As an example, one of the projects that I
4 started early in my career -- I believe the first time I
5 did it was in Quincy, Illinois. I experimented with
6 moving police officers into troubled neighborhoods. I'd
7 buy residences and move my officers into those
8 neighborhoods in order to just police those neighbors. So
9 the officer really answered to the community for
10 day-to-day operations. So I didn't assign the officers.
11 He didn't take calls unless it was a call in his
12 neighborhood.

13 Q At that time was it a new, innovative idea?

14 A Yes. It was never done anywhere else in the country.
15 It has been replicated many times across the country, but
16 it is still in effect in a lot of places. Geographic
17 policing is an offshoot of that. So you have geographic
18 policing where you have officers that work areas --
19 consistently work the same areas the same time of day so
20 they get to know the people, and they are able to
21 communicate with the community back and forth on a regular
22 basis. There has been transition to the live-in policing
23 to geographic policing now, but I think the same intent is
24 still there.

25 Q In your role then, as a chief who has implemented

1 reforms, as a monitor, as a consultant for the Department
2 of Justice, and serving as a national educator for law
3 enforcement, have you seen and dealt with remedial plans
4 and settlement agreements that address civil rights
5 issues, including use of force and community relations?

6 A Yes. I have participated in a great deal of them
7 over the last 13 years.

8 Q As parts of this investigation that you have heard my
9 colleagues talk about and you have heard the Court talk
10 about, were you involved with the following -- with the
11 team of the attorneys here? Were you involved in
12 in-person interviews in the community, which included, as
13 Ms. Jones stated, individuals and/or organizations?

14 A Yes. I was involved extensively.

15 Q Did you actually participate in those interviews?

16 A Yes, I did.

17 Q Were you involved in interviews with police officers
18 in all ranks of the Portland Police Bureau?

19 A Yes, I was.

20 Q Did you actually participate in interviews of command
21 staff, including Chief Reese?

22 A Yes.

23 Q Did you participate in the interview of other city
24 employees that are involved with the police bureau in its
25 accountability system?

1 A City employees and city residents, yes.

2 Q And did you actually observe training of the

3 Portland Police Bureau?

4 A Yes, I did.

5 Q I would like to talk a little bit about your analysis

6 of this case. Did you actually read and analyze written

7 policies and practices that the City of Portland has for

8 the Portland Police Bureau?

9 A Yes, extensively.

10 Q In particular, did you read and analyze a variety of

11 use of force reports that were provided from the

12 Portland Police Bureau?

13 A Yes, I did.

14 Q Did you review actual written training materials? In

15 addition to observing training, did you actually review

16 and analyze training materials?

17 A Yes, I did.

18 Q You heard my colleague Jonas Geissler mention that

19 there was a findings letter. Are you familiar with this

20 findings letter?

21 A Yes, I am.

22 Q Do you have any disagreement whatsoever with the

23 findings that the department reached?

24 A I do not.

25 Q Did you actually help participate in advising the

1 department on those findings?

2 A I participated in advising in the findings and

3 actually offered those as my recommendations of findings.

4 Q And have you reviewed the proposed settlement

5 agreement in this case that has been presented to the

6 Court for approval?

7 A Yes, I have.

8 Q As you know, the agreement provides for reform of a

9 use of force policy and a Taser policy, as you've heard

10 Mr. Geissler just explain in his presentation. However,

11 in your position, as a chief of over 35 years, should a

12 settlement agreement contain all of the specifics of the

13 policies that are to be reformed by an agreement?

14 A No, it doesn't. It gives direction of those

15 important policies that need to be written, but it

16 doesn't -- it leaves to the department the opportunity to

17 expand on those things.

18 So we say that you have to write a good and

19 constitutional policy for ECWs. Well, at the same time

20 you may want to look at batons in the same way that you

21 are going to look at ECWs. I believe the department

22 understands that, and it is in the document -- in the

23 spirit of the document. That really gives them a lot of

24 latitude to undertake a thorough review of all of its

25 force policies.

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1 Q Just for purposes of the record and the public, "ECW"

2 is an Electronic Control Weapon?

3 A An Electronic Control Weapon, yes.

4 Q Why is it important for different jurisdictions to

5 have that leeway to implement policies?

6 A A force policy is designed by a police department and

7 its leadership in the police department in conjunction

8 with the Government that they serve, so the mayor, the

9 City Council, as well as the community, should have input

10 into the force practices that are going to be used on the

11 members of their own community. Those force practices,

12 those force policies, are different, depending on the

13 community, where some communities may decide that they do

14 not want Electronic Control Weapons being used on the

15 members of their community, and there would not be an

16 electronic control tool being used in that community

17 because the community said they don't want it.

18 Now, those are the kinds of collaboration issues

19 that a police department goes through with its elected

20 leaders and its community and the reasons to have these

21 kind of synergetic communications that should go on

22 between the department and its community leaders.

23 Q I would like to focus on two policies that you heard

24 Mr. Geissler speak about in the settlement agreement, the

25 Taser policy and the use of force policy. First of all,

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1 did you help review and construct the terms of how the

2 Taser policy would be reformed in the settlement

3 agreement?

4 A Yes, I did.

5 Q Did you find it adequate that only -- that the

6 settlement agreement says that only one Taser can be used

7 at a time intentionally? Is that an adequate statement of

8 the policy to be made?

9 A Yes. It is a fair statement.

10 THE COURT: One moment. Perhaps some of the

11 folks might not have heard my admonition at the beginning

12 or maybe you came in later, but because of rules of court,

13 and I do not have the authority to change it, there will

14 be no audio or video recording of these proceedings.

15 Thank you. You may continue.

16 MS. BROWN: Thank you, Your Honor.

17 BY MS. BROWN:

18 Q And what about any problems or concerns -- is there a

19 review process within the settlement agreement to catch

20 concerns about the overuse of Tasers?

21 A Yes, there are several areas. One is the supervisors

22 responding to a use of force and doing a investigation of

23 that use of force. It would be a first collection area

24 where information would come, and then there is a force

25 review that occurs secondly. So those are two areas where

1 it would be caught.

2 Q What about EIS? Is that another area that can be
3 used?

4 A EIS is part of a system that allows officers to be
5 identified for potential training opportunities that may
6 exist or for issues outside of the policies that they may
7 have violated so that the department can take remedial
8 action so that the behavior does not continue.

9 Q And EIS is the Employee Information System, correct?

10 A Right.

11 Q I would like to move on to the use of force policy to
12 be implemented in our agreement. Can you talk about the
13 difference between the structure of our use of force
14 policy to be implemented versus a force continuum? What's
15 the difference between those two things?

16 A Well, a force continuum was designed -- and I was
17 around when they first started putting those together.
18 The force continuum was originally designed to teach young
19 police officers what kinds of tools they would need to
20 engage in when involved in issues in their community. It
21 is a training tool. It has taken on a life of its own
22 over a period of time. It is a very good tool in helping
23 to analyze force. It is a good tool in helping to look at
24 force, but it doesn't belong in a policy.

25 Q Why not?

1 A Because it is a training tool. Officers have to make
2 a decision based on the totality of circumstances. No two
3 circumstances are going to be exactly the same.

4 Q Is that a constitutional standard, the totality of
5 the circumstances?

6 A Yes. That's a constitutional standard in *Graham v.*
7 *Connor*.

8 Q Is there anything within the use of force policy, as
9 implemented by the settlement agreement, that would
10 prevent the force continuum to continue to be a training
11 tool?

12 A Absolutely not. In fact, I'm quite certain that it
13 was in there. It was in their policy when I first
14 reviewed it in their training, and I'm quite certain it
15 still is.

16 Q Our agreement provides for the Department -- the
17 Department of Justice's review and approval of use of
18 force policies. In your opinion, is that important, and
19 if it is, why?

20 A Well, I think it is important because it is the only
21 way at this point in time, based on what we have seen in
22 our investigation, the community does not have a high
23 level of trust in its police department at this time. In
24 order to ensure that the community -- that there is an
25 independent review going on of those policies, this

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1 settlement agreement was reached in a way -- designed to
2 actually provide for that by having DOJ look at it and
3 make sure that it meets best police practices.

4 Q The use of force policy reform also requires
5 de-escalation techniques in its policy. What's the
6 importance of a de-escalation technique being incorporated
7 into a policy?

8 A De-escalation techniques are purposefully trained to
9 police officers to remediate situations which would
10 otherwise -- could spiral out of control based on our
11 knowledge and understanding of conditions and things that
12 happen in the community.

13 So understanding that you should consider those
14 things before you do anything, like calling out a special
15 squad to respond to the scene, stepping away and allowing
16 time to pass and let people's tempers cool. So there are
17 other things you can do.

18 So teaching those types of de-escalation
19 techniques, reinforcing those techniques in real life
20 reviews, which is both the supervisory review and
21 after-action force reviews, if you look at those things
22 and you look back and say, "Well, maybe if we showed the
23 officer that he could have stepped away here, because
24 there was not a real issue that needed to be forced," that
25 may have changed the emotional content of that issue which

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1 would have resulted in a force not having to be used.

2 So it is really trying to get in front of the
3 issues and to identify those risks and where those risks
4 are and how to remediate those risks going forward. So it
5 is a constant learning; it is a constant improvement.
6 When you look at every force event, you look at every
7 contact that spirals out of control and examine it to see
8 where a different decision could have been made that may
9 have yielded a better outcome.

10 Q I would like to turn now to when a situation is not,
11 unfortunately, de-escalated and ends up in an
12 officer-involved shooting. What in the agreement, in
13 regards to public safety statements, deals with responding
14 to officer-involved shootings?

15 What is in the agreement with regard to a
16 public-safety statement that helps respond to these issues
17 if there isn't a de-escalation, and it turns into, not
18 only a force event, but an officer-involved shooting?

19 A So in an officer-involved shooting, what is a public
20 safety statement? A public safety statement is a
21 statement from the officer given at the scene of the
22 incident, which he gives to his supervisor or the next
23 responding officer, someone that has not been involved in
24 that issue, where he would outline what was the immediate
25 incident that took place, where were guns fired out at,

1 which direction were they fired, where the department or
2 the supervisor should look for potential wounded people,
3 could rounds have gone down range, could they have injured
4 someone down range.

5 You are really looking for where the offenders
6 may be, which direction they may have went. So you are
7 looking at questions that really revolve around community
8 safety. The department's responsibility is still to
9 protect the community. So the officer's response, the
10 immediate response, is to make sure that the immediate
11 area and the immediate information that they have is
12 designed to help protect the community to seal off those
13 areas that may be in jeopardy of being contaminated and to
14 make sure that the department has the best chance at being
15 able to get help, medical help, for those people that may
16 have needed it and may need it and also to find out where
17 the offenders may have gone.

18 Q In your experience, does the public safety statement
19 requirement that is provided for in this agreement provide
20 an adequate remedy to the concerns of the public regarding
21 officer-involved shootings and getting information after
22 officer-involved shootings?

23 A It should, yes.

24 Q I would like to turn your attention now to the
25 importance of officer accountability systems. Can you

1 explain why that is important for public confidence?

2 A A community has to believe that -- well, let's start
3 this way: If the community does not trust and believe in
4 its department and its officers to have an internal system
5 of managing their force operations, then every use of
6 force that an officer has is going to be deemed
7 inappropriate.

8 The vast majority of police officers do a very
9 good job at what they do. They try very hard. They are
10 very honest people. But on the other hand, there are some
11 people that aren't. There are some police officers that
12 aren't, and they shouldn't be police officers. That's a
13 fact of life. It is a fact of life in every business in
14 the human environment. That's the way it is.

15 So you have to have an accountability system,
16 which reviews those force, and that fairly addresses
17 concerns of the community as well as addresses concerns of
18 the officers themselves and the risks that they take in
19 putting their lives on the line every day when they go out
20 to work. So there has to be a fair balancing act, if you
21 will, between those important things for the community and
22 those important things for the young men and women that we
23 ask to do a very difficult job.

24 Q In your opinion, does our settlement agreement
25 incorporate those provisions necessary to hold officers

1 accountable through a system such as you are discussing?

2 A Yes, it does.

3 Q Is it typical for a police department to conduct
4 their own internal investigations to impose discipline,
5 and if so, why is that typical?

6 A It is not only typical, I think it is important. It
7 is important because, unless you have been in the dark
8 alley having experienced what it takes to do those kind of
9 things, it is very difficult to draw what's right and
10 what's not right and what should have been done and what
11 shouldn't have been done.

12 The department needs to teach its young officers
13 and its young supervisors and its young leaders what
14 community values are, how those community values are
15 instructive in the work that we do, and using those
16 community values as a tool to build trust with the
17 community.

18 They do that by showing that they have the
19 ability to see right and do right when you see it and make
20 right decisions for the right reasons. Each leader in a
21 police department has that responsibility, and they must
22 draw that responsibility as part of doing their job.

23 If they don't -- they learn that by over time
24 examining the kinds of good conduct and misconduct that
25 can occur within their own ranks and remediating the

1 misconduct and raising up the good conduct, by recognizing
2 the good things that police officers do and by addressing
3 the bad things that police officers do.

4 Q So in your opinion, is it important to have both
5 public oversight as well as the internal police-imposed
6 discipline?

7 A Yes, it is.

8 Q Our agreement, as you know, and as you have heard my
9 colleague state, the DOJ is the monitor of the agreement.
10 There is also a provision as you heard Mr. Geissler talk
11 about, a compliance officer. In your opinion, when is it
12 adequate -- reasonable to have the DOJ as a monitor and
13 not have a court-imposed monitor?

14 A I had this discussion, I think quite a while ago,
15 with the lawyers for the Government. When a community is
16 interested in embarking on a journey to reform its police
17 department, and there are some key words I'm using here.
18 "Embarking on a journey to reform its department." And
19 they have leadership that says, "Yes, we're willing to do
20 that." I heard that from the chief of police. I heard
21 that from the leaders of Portland. I have heard it from
22 members of the city staff, their legal department.

23 That journey, if they are willing to undertake
24 that journey, which is a very difficult role to take, if
25 they are willing to undertake that, then you should

1 embrace that as an opportunity and allow for them to go
2 forward and resolve those kinds of issues that went on in
3 the past and look forward to a better future. By
4 embracing that and allowing them, it becomes theirs.

5 The spirit of the Constitution is embedded in
6 the settlement agreement, and if you allow them to adopt
7 and accept that as theirs, then it becomes part of the
8 culture much sooner, because you are really going to have
9 to change the culture of the organization in order to
10 remediate the kinds of things that we saw occurring in the
11 force incidents when it involved people who are mentally
12 ill or people in crisis.

13 Q In jurisdictions where you have observed other
14 agreements, is it your opinion that court-enforced
15 monitors are more appropriate where there is not that type
16 of commitment from the jurisdiction?

17 A Yes, it is. I think you can see, in looking around
18 the country at the different kinds of things, there are
19 some cities that have undertaken it even without DOJ
20 oversight, where they've said, "Look, we understand what
21 we did wrong. We understand what we're missing. We
22 didn't see it. Now we understand," and they went about
23 making the changes.

24 But having a DOJ court monitor is satisfactory,
25 based on what I see here in this community, where you have

1 a community that doesn't entirely trust its police
2 department and you need an independent person, plus you
3 are going to put somebody on the ground, a compliance
4 officer, to actually assure for the measures that are
5 being taken and to work with the City on it. I think
6 there is plenty of oversight.

7 Q Do you think that the amount of oversight is fair,
8 adequate, and reasonable to address the concerns as raised
9 and alleged in the complaint in this case?

10 A I think it is. And I think if they don't get it
11 done, then certainly the parties have the ability to bring
12 it back before this court.

13 Q I'm about ready to wrap up, Mr. Gruber, but I want to
14 discuss briefly the reforms in the settlement agreement
15 that go beyond the constitutional allegations. You have
16 heard Mr. Geissler talk about Section V of our settlement
17 agreement, which pertains to use of force -- I'm sorry --
18 which pertains to community relations and community
19 policing.

20 Can you discuss whether or not those provisions
21 address the concerns -- I'm sorry. It is Section IX.
22 Section IX of the agreement. Can you address to the Court
23 and the public if the policies and the procedures
24 implemented in Section IX pertain directly to the types of
25 comments that you've heard during the different interviews

1 that you took part in?

2 A Specifically the racial profiling issues?

3 Q Whether it be racial profiling or community
4 involvement.

5 A Community involvement. I believe that the settlement
6 agreement in its entirety has great synergy to the
7 complaint that was filed by the Government. There are
8 opportunities within the settlement agreement for all
9 areas of concern in the community to be evaluated and to
10 be remedied by the parties if they are open to looking in
11 those areas.

12 If you look at a use of force, and you look at a
13 pattern of uses of force, you may very well see whether or
14 not there was any kind of data that allowed one to measure
15 whether or not there was racial profiling or whether or
16 not there could have been better community engagement and
17 whether or not there should have been a different tool
18 used. There will be all kinds of data and opportunities
19 for the parties, especially the City, and the leaders for
20 the City, to look and see whether or not there was any
21 activity on the part of the department that would point or
22 give them a pointer or identify outliers that may
23 contribute to other types of constitutional violations.

24 Q You mentioned embarking on a journey as being part of
25 what the City is undertaking here. Could you explain what

1 the difference, in your opinion, between just individual
2 behavioral change of officers versus cultural change and
3 practices and how long it will take in your experience to
4 implement these types of cultural changes.

5 A The work that the community and police department is
6 about to undertake and already started in the police
7 department for quite a while now is very difficult work to
8 do. It is not easy to change historical culture in any
9 environment. In any institution, it is very difficult to
10 make those kind of changes. It is more difficult in a
11 closed, isolated society like police work.

12 In that closed community, you know, effecting
13 change is going to take time. You are going to have to
14 retool and rethink how you go about doing your business
15 and how you go about doing your training and how you go
16 about officer accountability, and there is many different
17 systems in that accountability system.

18 All of those things are going to take time. It
19 will be a long time before you actually begin to see that
20 it is not just an individual that you are trying to
21 change. It is an individual's thinking going forward.
22 That cultural change is difficult to achieve, and it takes
23 time. But once you get there, you are pretty much assured
24 it is not going to slip back.

25 Q In your opinion, does our settlement agreement

1 provide the infrastructure to help the City of Portland
2 and the Portland Police Bureau make that cultural change?

3 A Yes, it does.

4 Q In your opinion, does the settlement agreement
5 provide/reasonably address the constitutional concerns
6 regarding excessive use of force raised in the findings
7 letter and addressed in the complaint?

8 A Yes, it does. There is tremendous synergy between
9 the complaint and the settlement agreement.

10 MS. BROWN: Thank you.

11 Nothing further, Your Honor.

12 THE COURT: We are not going to have
13 cross-examination of the members of the public who come to
14 testify, but I will invite and allow cross-examination by
15 the parties of witnesses called. So let me first turn to
16 the City.

17 MS. BROWN: Your Honor, if I may. We actually
18 stipulated with the parties that there would not be
19 cross-examination.

20 THE COURT: All right. I will give them that
21 opportunity. If pursuant to that stipulation no parties
22 have any questions for Chief Gruber, I will proceed with a
23 few of mine.

24 Does anybody wish to ask any questions?

25 MS. OSOINACH: Not for the City, Your Honor.

1 MR. KARIA: None from the Portland Police
2 Association.

3 MS. ALBIES: None from AMA.

4 THE COURT: Chief Gruber, I have three
5 questions: Following that last point about timing to
6 implement, I note that when the settlement agreement and
7 the joint motion to approve it was first filed was
8 October 2012. It envisioned in paragraph 178A of the
9 settlement agreement that it would take about five years
10 to implement, and they built in the date of, I think,
11 October 2017. Well, that's now about a little more than
12 three and a half years from now.

13 Do you think that the settlement agreement still
14 should be on a five-year track towards expectation of full
15 implementation, and if so, what do we do about that
16 provision in the agreement that envisions full completion
17 by October 2017, which is only about three and a half
18 years?

19 MR. GRUBER: I think a lot would depend on how
20 well the City has used its time and how well they've moved
21 their department forward.

22 I had an opportunity to read comments by Chief
23 Reese recently. He noted that there was far fewer use of
24 force complaints and uses of tools are way down as well.
25 So it seems to me if, in fact -- I would respect that they

1 probably are very -- I think Chief Reese is an honest man.
2 His assessment of that is the work they have been doing is
3 having an impact, and they have already started that
4 cultural change.

5 In a lot of other agreements, Your Honor --
6 particularly, I haven't addressed the one in Puerto Rico
7 yet. I was on that case. That is going to take them a
8 lot more time because of the infrastructure that has to be
9 built in that organization.

10 So I don't know exactly where their EIS system
11 is in its development. I haven't been privy to the work
12 that the City has been doing since I left this case, but
13 that will all depend on where they are at once you get
14 your compliance officer, and he's able to sit down and
15 make some assessments, you should be able to look and see
16 what it might take.

17 I would say -- I would leave it at five years
18 and then address that as you go along. If you can get it
19 sooner than that, that would be great. If you can get him
20 out, as long as the City is going to continue its journey,
21 it should work. But I would leave it the way it is
22 written now.

23 THE COURT: Although the way it is written now,
24 it talks about October 2017.

25 MR. GRUBER: Five years, Your Honor. I would

1 leave it at five years.

2 THE COURT: I understand. I understand what you
3 are saying, and I appreciate that.

4 That leads to my next question about the
5 compliance officer. I hear and appreciate and I believe I
6 understand what both the Government is saying, what you
7 are saying as an expert, in terms of the important role
8 that the Department of Justice plays as a monitor, and the
9 important role that the compliance officer community
10 liaison plays.

11 I see that in paragraph 162, among other things,
12 the compliance officer is responsible for -- not
13 exclusively responsible -- for assessing the compliance
14 with each of the material provisions of the settlement
15 agreement and preparing quarterly written public reports
16 dealing with that.

17 In your expert opinion, would it be helpful also
18 for that compliance officer, and maybe even the Department
19 of Justice too in their monitoring role, to periodically
20 and publicly report to the Court, whether it be annually,
21 semiannually, quarterly, I don't know, about how matters
22 are progressing in terms of compliance with the settlement
23 agreement? What's your expert opinion on that?

24 MR. GRUBER: I would say that the Court getting
25 a status update and assisting in the implementation is an

important role, one that shouldn't be underestimated, especially if there are converging differences of opinion about how things are going to get things done.

As an example, it might be the Garrity issue, as an example of something that could wedge between parties within the settlement agreement. So perhaps the Court could lend its voice and advice to the parties in which direction the Court thinks it might need to go.

THE COURT: So the Garrity issue relates to the 48-hour rule that has been referenced?

MR. GRUBER: Yes.

THE COURT: One last question I have for you. This has been helpful, and I appreciate your expertise on this.

I heard you say that with respect to the letter that came from the Department of Justice, the September 12th, 2012 letter, you played a role in it. You agreed with its findings. On page 38, one of the findings under community policing, is that the Portland Police Bureau should consider reviewing the implementation of its 2009 Portland Police Bureau plan to address racial profiling. You touched on racial profiling a little bit in your answers to Ms. Brown.

Let me ask you, I don't believe the settlement agreement expressly discusses racial profiling and the

remedies for it. In your expert opinion, how is the settlement agreement fair, reasonable, and adequate, given that it does not expressly include a provision dealing with racial profiling?

MR. GRUBER: I think there are two things, Your Honor. When we were doing the investigation, we specifically looked for any indication to us where racial profiling could be identified as an issue. There were certainly aspects of it that were viewed, but where we could not make a determinative finding, partially because it was not good data. The data sources were just not there to provide that.

So what we were looking for was an opportunity in order to have the City to begin to develop data to identify potential outliers or potential areas where risk may be identified by getting that data and examining it themselves.

Certainly the department has enough people that are smart enough to be able to figure out those kind of data sources and those kinds of issues where we might have that. When we couldn't -- you just didn't have the data to give us the right direction. We do think that the data can be developed and hopefully to stop -- data and information will come from it, and we can then get a good look and see whether or not it really exists.

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THE COURT: Thank you.

Let me tell you, Chief Gruber, the Court very much appreciates your time, your wisdom, and your expertise on these issues.

Let me ask, Ms. Brown, in light of the Court's questions, any follow-up questions for Chief Gruber?

MS. BROWN: No, Your Honor. I don't have any follow-up questions. There are two things I can point the Court to after we release Chief Gruber that may help with the two concerns you had.

THE COURT: You are welcome to point to them now.

MS. BROWN: Great. First of all, in regards to the issue with the racial profiling, if you look at paragraph 146, and this was addressed in Chief Gruber's comments that the process allows for that to come forward. 146(d) specifically directs the COAB to consider input from the Human Rights Commission, Community Police Relations Committee, including its work to implement the 2009 PPB "Plan to Address Racial Profiling."

THE COURT: Thank you.

MS. BROWN: The other thing was the substantial compliance, which the Chief mentioned in his answer. In 178 it talks about how the Court shall retain jurisdiction until the City has substantially complied. Although the

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parties anticipate -- of course, when we filed this in December of 2012, five years would be 2017, it does leave room for the Court to continue to retain jurisdiction for all purposes until the City has substantially complied.

THE COURT: Very good. Thank you very much, Ms. Brown.

MS. BROWN: Thank you.

THE COURT: Thank you, Chief Gruber. You may be excused.

The Government may call the next witness.

MS. BROWN: Your Honor, we would like to call Chris Bouneff, the director of NAMI. We are going to have Mr. Bouneff come to the mike and provide his statement to Your Honor.

THE COURT: Very good.

MR. BOUNEFF: Thank you for this opportunity to weigh in. My name is Chris Bouneff. I am executive director for the Oregon State Chapter of the National Alliance on Mental Illness. We are a membership grassroots organization with about 1,700 members in the state. Our membership is primarily composed of individuals living directly with mental illness or family members who have a loved one or friend with mental illness.

We are invited today to weigh in as to whether

1 this agreement was fair and adequate, and in our judgment,
2 it is. There are certainly many details that need to be
3 worked out, and so we encourage that the Court will
4 continue its participation in the agreement.

5 As an example, our organization is one of the
6 pioneers in spreading around crisis intervention training
7 and the deployment of crisis intervention teams across the
8 nation. While the agreement does go into some detail
9 about making that system more robust and replicating the
10 Memphis Model, which is the preferred model, there are
11 many details that an organization like ours would be
12 interested in seeing, which is, will those teams be
13 available 24 hours a day? Will the representation of
14 those teams be adequate to the needs of the population?
15 What would be an adequate response time? How are those
16 teams deployed?

17 Sadly, given our mental health system as the way
18 it is, as family members and those who care for
19 individuals with illness, often we do have to turn to law
20 enforcement as a first responder. In those cases you do
21 so with trepidation, because you are never certain whether
22 the officers who respond are adequately trained. And if
23 they are adequately trained, if they are embracing that
24 training so that the response, when you do a welfare
25 check, you are not looking for that episode to escalate

1 into any type of use of force. It is really your
2 last-ditch effort to get help for your loved one.

3 I also wanted to speak to, as part of being the
4 state chapter, we have 15 local chapters across the state,
5 including a chapter that serves Multnomah County, from
6 which, I'm guessing later on, you will hear from some of
7 our members.

8 But there is a portion of the agreement that
9 does cover mental health services and the provision of
10 those services. I think it is important to note what it
11 does say in the agreement. This agreement has no
12 influence on those services, yet those services are going
13 to be critical for keeping people out of crisis.

14 If we continue on the path that we are going,
15 the changes that will be implemented hopefully at the
16 police bureau will be even more critical, because the path
17 we are going, we're not helping people to prevent crises
18 in this state.

19 The Department of Justice is in a separate
20 agreement with the State of Oregon, of which it noted in
21 an interim report, I believe, which became an exhibit, as
22 I understand. In the year and a half since that agreement
23 there has been no change in this state. The agreement
24 does allude to parties, such as the new Coordinated Care
25 Organizations, which are new Medicaid-managed care plans.

1 It alludes to our counties, which are the ultimate mental
2 health authorities in our state, and yet our parties are
3 not essentially at the table, and there is nothing to
4 compel them to be at table and to increase the type of
5 services that would be necessary to cut down the number of
6 incidents in which law enforcement encounters someone in
7 crisis or someone with an untreated mental illness.

8 We feel that is critical to address those types
9 of issues for the simple fact that if we can reduce the
10 number of encounters between law enforcement and people in
11 crisis or people with untreated mental illness, we reduce
12 the opportunities for force to be used.

13 I think in this case it is important to note, as
14 comprehensive of a framework that this agreement gives,
15 there is that element that will be missing from this
16 agreement and that this agreement will have no influence
17 on.

18 With that, I conclude my comments.

19 Thank you. Very good.

20 THE COURT: Very good. Thank you, Mr. Bouneff.

21 MS. BROWN: Your Honor, if I may just ask
22 Mr. Bouneff one other thing.

23 You mentioned the CCOs and the counties. In
24 your experience, as serving as director of NAMI, who
25 actually controls the funding for crisis services in the

1 state of Oregon?

2 MR. BOUNEFF: It primarily rests within our
3 counties. The State obviously funds those services, but
4 the County retains its role as the mental health authority
5 in the state.

6 In the case of Multnomah County, there is some
7 shared responsibility with the new Coordinated Care
8 Organization formed here. But again, we are in such
9 adjacent stages of the formation of that. It is uncertain
10 to us on the outside looking in exactly how those services
11 are going to be delivered in any new fashion that will
12 improve access and improve response time and improve
13 outcomes.

14 MS. BROWN: You mentioned the aspirational
15 statements within Section V, which is the community-based
16 mental health services agreement. Would you agree then
17 that it is going to take coordination between, not only
18 the counties and the CCOs, but the State, in working with
19 the City in order to get the answer?

20 MR. BOUNEFF: Yes. The movement of health care
21 transformation, as it is termed in our state, is to move
22 to more accountability and outcomes. That is a
23 State-driven mandate, but they have given a lot of leeway
24 to local communities as to how to respond and meet those
25 outcomes. I would say, yes, it is going to take more

1 coordination.

2 Again, as an advocate looking from the outside
3 in, we don't believe that coordination is yet there.
4 Certainly there is the aspiration to get there, but the
5 State and the County and the Coordinated Care Organization
6 aren't working together. We won't see change.

7 As an illustration, I would dare say that in the
8 USDOJ's agreement with the State of Oregon over homestead
9 violations, you could go to pretty much every Coordinated
10 Care Organization in the state, and they would have no
11 idea that agreement actually exists, even though in the
12 end they are the entities being held responsible to those
13 outcomes.

14 MS. BROWN: You mentioned the other folks that
15 will come here today from your regional organization. Is
16 there actually a NAMI member that is actually represented
17 on the Behavioral Health Advisory Council?

18 MR. BOUNEFF: Yes. We have a member, Shannon
19 Pullen, that is scheduled to present, not as a NAMI
20 member, but as a member of that effort.

21 MS. BROWN: Is that an area where the concerns
22 mentioned about the availability of CIT and other mental
23 health concerns on that behavioral advisory council, does
24 that provide the ability for her to bring concerns from
25 the NAMI perspective to that council?

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1 MS. JONES: Have you spoken with the Department
2 of Justice in the course of the Portland Police Bureau
3 investigation?

4 DR. BENNINGTON-DAVIS: Yes, many times.

5 MS. JONES: Have you seen the proposed
6 settlement agreement in this case?

7 DR. BENNINGTON-DAVIS: I have.

8 MS. JONES: Have you come to any conclusions
9 about the proposed settlement agreement?

10 DR. BENNINGTON-DAVIS: I have. Shall I read my
11 really brief statement? This will take about three
12 minutes.

13 THE COURT: That's fine.

14 DR. BENNINGTON-DAVIS: I speak in support of the
15 agreement that the DOJ and the PPB have proffered.
16 Cascadia, as I mentioned, is a community mental health and
17 addictions provider in Oregon. Also, Cascadia was the
18 lead agency in connection with the Bazelon Center for
19 Mental Health Law that had the opportunity to study
20 unwanted contacts between police and people with serious
21 mental illness in the community over the space of about
22 three years. So we became deeply immersed in how the
23 police and community mental health work together.

24 Also, Cascadia operates Project Respond, which
25 is the Portland area mobile crisis team. We also

1 MR. BOUNEFF: I believe it will, yes. But
2 again, with anything, the details that come out of this
3 framework, as an advocate, and we are going to watch
4 closely, and we will take whatever opportunities presented
5 and make opportunities, if they are not presented, to
6 provide our prospective, both formal channels and informal
7 channels.

8 MS. BROWN: Thank you very much.

9 THE COURT: Thank you, Mr. Bouneff.

10 The United States may call the next witness.

11 MS. JONES: The United States would like to call
12 Dr. Maggie Bennington-Davis.

13 Thank you for joining us, Dr. Davis.

14 DR. BENNINGTON-DAVIS: My pleasure.

15 MS. JONES: Would you mind informing the Court
16 who you are and your position.

17 DR. BENNINGTON-DAVIS: Good morning, Judge.

18 THE COURT: Good morning.

19 DR. BENNINGTON-DAVIS: My name is Dr. Maggie
20 Bennington-Davis.

21 I am the chief medical officer for Cascadia
22 Behavioral Healthcare, which is a community mental health
23 and addictions provider here in the Portland area. I also
24 have a seat on the Behavioral Health Advisory Council for
25 the Portland Police Bureau.

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1 participate in the Mobile Crisis Unit, which is a police
2 officer and a Cascadia mental health professional paired
3 up in a police car.

4 So through all those efforts, we have witnessed
5 excellence actually in many police officers during many
6 calls that we both have responded to. But changing the
7 culture so that excellence isn't confined to a subset of
8 really good officers, so that skill and excellence is
9 demonstrated on every call-out for people in behavioral
10 crisis, that's really what this agreement is trying to get
11 at. It is trying to get at deep culture change.

12 Recently I attended the annual police awards.
13 The auditorium there was full. There were many
14 dignitaries and politicians in the audience, and I was
15 struck by the stories that accompanied these awards, so
16 many of the stories were about heroic acts of police in
17 the context of police interacting with people in
18 behavioral crisis and in emotional distress and that the
19 Portland Police Bureau was using its annual awards to
20 emphasize its values with regard to people in emotional
21 crisis. I think that started to get at culture change.

22 The proposed DOJ settlement calls for an
23 enhanced C-I Team, which I very definitely support. One
24 group of self-selected officers has already been through
25 the new training and a new one is coming up. The fact

1 that so many officers volunteered for the first and now
2 the second training, and the fact that the training is
3 taking suggestions from the newly created Behavioral
4 Health Advisory Council and integrated those ideas into
5 the new training, those are all good signs to me. I am
6 confident that PPB, monitored by DOJ, is in fact on the
7 right track.

8 My final comment actually alludes to what
9 Mr. Bouneff before me also talked about. It is about the
10 part in the proposed settlement that calls for the new
11 Coordinated Care Organizations and the State Office of
12 Addictions and Mental Health to join this effort to ensure
13 that the mental health system, as a whole, is robust
14 enough so that people who are vulnerable to fall into
15 crisis on the streets of Portland can get the help that
16 they need before police ever need to be involved at all.

17 I understand that the Coordinated Care
18 Organizations and the State may see that bit in the
19 proposal as outside the scope of this settlement, but the
20 truth of the matter is that it is up to our state mental
21 health leadership and to the CCOs, who have taken on the
22 health care system to ensure that mental health and
23 addiction services are indeed sufficient to prevent crisis
24 and minimize the number of people that the police need to
25 intervene with, who could find better solutions in the

1 mental health system. So I, for one, appreciate that this
2 proposal calls that out specifically.

3 Thank you for the opportunity to support this
4 agreement.

5 MS. JONES: Thank you so much.

6 THE COURT: Thank you, Dr. Davis.

7 Any follow-up question for Dr. Davis?

8 MS. JONES: No, Your Honor.

9 THE COURT: All right. Thank you, Dr. Davis.

10 Does that conclude the witnesses for the
11 United States?

12 MR. GEISLER: Yes, Your Honor. That concludes
13 the sum total presentation by the United States. If your
14 Court please, we could do a closing after we are completed
15 with witnesses. And as you see fit, Your Honor, we are
16 happy to provide references to the settlement agreement,
17 if required.

18 THE COURT: Excellent. I appreciate that,
19 Mr. Geissler. That's helpful.

20 Let me now turn to the City of Portland. I will
21 first ask, Ms. Osoinach or Mr. Woboril, to introduce
22 yourselves and also let me know if you have any witnesses
23 that the City of Portland would like to present.

24 MS. OSOINACH: Thank you, Your Honor. Ellen
25 Osoinach on behalf of the City of Portland. I will be

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1 making the City's presentation. If I could, since we have
2 been going for about an hour and a half now, I was
3 wondering if we could take a five-minute recess. That
4 would help me to set up the PowerPoint. I can tell you
5 that the City's presentation, and the audience members
6 will perhaps be grateful, will only be 15 minutes. So I
7 think we will be able to move immediately to testimony if
8 you grace us with about five minutes.

9 THE COURT: That's fine. Before we do that, let
10 me ask Mr. Karia. I will give the opportunity to the
11 Portland Police Association for you to introduce yourself
12 and any representatives with you.

13 Did the Portland Police Association want to
14 present any testimony?

15 MR. KARIA: No, Your Honor. I can introduce
16 myself real quickly along with our representatives. I am
17 Anil Karia. I am legal counsel for the Portland Police
18 Association. To my left and to Your Honor's right is
19 Portland Police Association President Daryl Turner and
20 Portland Police Association's Secretary/Treasurer
21 Tom Perkins.

22 THE COURT: Thank you, Mr. Karia. Welcome,
23 gentlemen.

24 Let me ask the AMA Coalition counsel, either
25 Ms. Albies or Ms. Curphey, do you plan on introducing

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1 witnesses or presenting testimony, and approximately how
2 long will that take?

3 MS. ALBIES: Ashlee Albies for AMA Coalition.
4 With me is Shauna Curphey. We are going to have three of
5 our members speak directly. It will take probably about
6 15 minutes.

7 THE COURT: Very good. Thank you.

8 We will take a five-minute break in a few
9 moments. Let me tell the members of the public, when we
10 come back from our break, we will hear from the City of
11 Portland followed by the AMA Coalition. Then my plan is
12 to turn to public testimony.

13 Let me give you a sense, for your planning
14 purposes, based upon my notes now of who has already
15 checked in, the folks that I would like to hear from in
16 approximately this order, and give me some flexibility,
17 please. It will be approximately in this order.

18 When we turn to public testimony, I would like
19 to begin with several witnesses from Consult Hardesty. I
20 understand we may have three witnesses from Consult
21 Hardesty.

22 Tom Steenson.

23 I think I saw Mr. Alexander. There you are,
24 sir.

25 Then I will turn to the Urban League of

1 Portland.

2 We have several witnesses from Portland

3 Copwatch.

4 I believe I saw Ms. Eng.

5 I have received video testimony from Mr. Ben
6 Pickering. I don't know if Mr. Pickering is here. If he
7 wants to testify. If you want to testify, I will give you
8 that opportunity. I have watched your video, but you will
9 certainly be afforded the opportunity to testify as well.

10 Mark Chasse, I believe you are here. Well, he
11 checked in, so I assume you are here.

12 Then we will turn to the NAACP and then Shannon
13 Pullen.

14 So I will give you further updates as we
15 proceed. That gives you a rough idea of what's coming up.
16 We will take a five-minute recess.

17 (Recess.)

1 (Section 2, Court Reporter Jill Erwin.)

2 DEPUTY COURTROOM CLERK: All rise.

3 THE COURT: All right. We're going to resume
4 now. Let me make an announcement to everyone as soon as
5 you're seated.

6 One procedural announcement I would like to ask.
7 As you know, we have a full day here. We have a lot to
8 cover. And, as you already can tell, I'm not going to
9 take particularly long breaks. So for those of you who
10 have brought food and want to eat, under normal
11 circumstances, people are welcome to go out in the hallway
12 and have a granola bar or whatever they have, but if
13 something more substantive and, frankly, a bit more
14 garbage is being created, I would like to ask folks who
15 plan on eating, which obviously you can't do in the
16 courtroom, to do two things: One, don't just plan on
17 doing it out in the hallway. Go to the first floor,
18 please.

19 First of all, if you want, there is a cafe, a
20 cafeteria, down on the first floor that has, both,
21 reasonable prices and good quality. By the way, that's
22 not a commercial advertisement. But you're welcome to go
23 down there to eat.

24 In addition, please eat down there and leave
25 your garbage down there. There's more capacity, more

1 garbage cans, on the first floor than there are on this
2 floor. I'm concerned that if we have too many people
3 eating out here, we're going to fill up the limited
4 garbage capacity that we have in the restrooms here and on
5 this floor too quickly, and it will become very unpleasant
6 for everyone.

7 So, please, if you need to eat or take a break,
8 go downstairs to the first floor, eat there, eat in the
9 cafeteria, take one of the tables if you want, and leave
10 the garbage down there. Or if you have garbage with you
11 here or on this floor, pack it out with you. Not packed
12 out of the courtroom, but packed off the floor, so we can
13 use the facilities down on the first floor. So I
14 appreciate that. I think that will make for a more
15 comfortable day for everyone here.

16 All right. With that said, we're going to
17 resume, and let me invite the City of Portland to make its
18 opening comments and call any witnesses that you wish.

19 MS. OSOINACH: Thank you, Your Honor. May it
20 please the Court, counsel, and members of the public.

21 Your Honor --

22 THE COURT: Why don't you do it from the podium,
23 because my understanding is we have a full courtroom in
24 Judge Haggerty's courtroom, and my understanding is they
25 can see me, the witness chair, and the podium, but not

1 counsel table.

2 MS. OSOINACH: Oh, okay.

3 THE COURT: And they can't see the graphics
4 either, but it's not a perfect world.

5 MS. OSOINACH: Your Honor, the City urges you to
6 accept the settlement agreement before you today. The
7 reforms in this agreement are a blend of national best
8 practices and Portland-specific solutions. The agreements
9 were formed by national and local experts, as well as
10 vigorous public debate. The agreement is unanimously
11 supported by the City's democratically elected officials.
12 It is backed by the union harbors and the rank-and-file
13 police officers of the Portland Police Bureau, and it is
14 currently being vigorously implemented by the City.

15 As you noted earlier, the sole question before
16 the Court today is whether to accept or reject the
17 agreement as it stands. Most of the written comments did
18 not directly address that issue. Instead, many of you
19 urged the Court to add different conditions or amend the
20 existing language. But that is not a choice that is
21 before the Court today.

22 Instead, this Court must grapple with the
23 decision of whether to accept a negotiated compromise or
24 send the parties down the path to trial.

25 This Court should conclude that the agreement is

1 fair, because it takes into account the significant work
2 that the City has already done prior to the Department of
3 Justice's findings. The agreement is reasonable, as
4 demonstrated by the City's ability to successfully
5 implement many of its provisions already.

6 And the results from the City's limited
7 implementation provide this Court with assurance that the
8 remedies are adequate. The situation that confronted the
9 City when this investigation first began has changed
10 significantly, so I'd like to give a little bit of the
11 history of the negotiations from the City's perspective.

12 The City has long been recognized as a leader in
13 community policing. So as Oregon's mental health
14 infrastructure eroded and police began encountering people
15 with actual or perceived mental illness with increasing
16 frequency, we turned to community experts for help.

17 In 2008 the Bureau began bureau-wide crisis
18 intervention training.

19 And by 2010 the City had been actively engaged
20 in the mental health community to identify ways by which
21 the police could improve interactions and relationships
22 with persons experiencing mental illness.

23 As Dr. Bennington-Davis pointed out, the Bazelon
24 Center for Mental Health Law in 2010 also selected
25 Portland for a pilot project to explore strategies for

1 reducing crisis contacts with police.

2 The City also asked the Department of Justice to
3 conduct an outside review of our use of force. We fully
4 and openly cooperated, providing the Department of Justice
5 with prompt and complete access to documents, information,
6 and personnel.

7 While the Department of Justice concluded that
8 the City did not engage in an unconstitutional pattern or
9 practice with regard to our use of force generally and
10 that we did not engage in unconstitutional discriminatory
11 policing, it did find that the City had a pattern or
12 practice of using excessive force in encounters with
13 people with actual or perceived mental illness.

14 Having so fully engaged in these issues, it was
15 difficult to have the Department of Justice conclude that
16 the City had violated federal law. And though we
17 disagreed with the Department's legal conclusions, the
18 City was certainly convinced that the City could better
19 equip its officers to handle the increasing number of
20 calls involving persons who were in behavioral crisis.

21 And we also agreed that we could more thoroughly
22 track these incidents to learn from them and to inform our
23 policing practices.

24 As Police Chief Mike Reese observed at the time,
25 this bureau and our community can improve the way we serve

1 and protect Portland's most vulnerable populations.

2 In response to the Department of Justice
3 findings, the City immediately and publicly committed
4 itself to work towards a settlement in this litigation
5 rather than engage in a protracted lawsuit.

6 Over a period of two months, the City engaged in
7 intense negotiations with the Department. Our guiding
8 principle during those negotiations was to support and
9 build on the efforts the City had already undertaken. We
10 avoided options that would have placed Portland in a
11 position to go it alone without the benefit of broader
12 community input. And we were mindful that the City needed
13 to produce measurable results.

14 The settlement agreement that resulted from
15 those negotiations was subjected to unprecedented public
16 debate and scrutiny, Your Honor.

17 The City Council held a lengthy and contentious
18 council session, and the agreement was amended as a result
19 of the council session, as the Department of Justice has
20 presented the Court in its exhibits.

21 In November of 2012 the Council unanimously
22 voted to approve the settlement agreement before you
23 today.

24 Now, City Council was aware when it authorized
25 the settlement agreement that the city budget officials

1 had estimated the agreement would need ongoing funding of
2 4 to \$5 million annually.

3 I cannot stress enough how remarkable the City
4 Council's vote was, given the fact that at the time the
5 City was facing a \$21 million deficit.

6 Just weeks after the agreement was approved,
7 Council also made another bold decision to identify
8 additional funding for the settlement agreement. They
9 unanimously approved a tax on landline phones to raise
10 millions of dollars a year for the settlement agreement
11 reforms.

12 That tax has been challenged, and the City
13 aggressively defended it and prevailed in the trial
14 courts.

15 Now, the makeup of the City Council changed
16 significantly from 2013 to 2014, and at the time there was
17 concern that the new City Council might not support the
18 settlement agreement. That proved not to be true.

19 In February of 2013 Council appropriated over
20 \$500,000 of one-time funding for the initial
21 implementation of the settlement agreement.

22 And, in addition, Council has been fully engaged
23 with the settlement agreement as it has played out over
24 the last year in these legal proceedings.

25 As you know, in 2013 the City addressed and

resolved two separate legal challenges to the settlement agreement.

Resolution of those matters required a vote of the new City Council and gave them an opportunity to reexamine and reaffirm the settlement agreement.

In June of last year the Council unanimously approved a cooperative agreement with amicus Albina Ministerial Alliance, and in November they unanimously approved a memorandum of understanding with the intervenor, Portland Police Association, that addressed the collective bargaining impacts of this agreement.

Earlier, in expert Chuck Gruber's testimony, he talked about the fact that the DOJ monitoring this agreement and City officials monitoring this agreement is warranted in this case because for cities that have implemented and that are -- are engaged in reform, it makes sense for both the Department of Justice and the community to monitor those reforms. So I wanted to let the Court and the public know a little bit about how it is that the City has already implemented many of the reforms in the agreement.

So probably many of you here today, because I know you are engaged in these issues, probably know that the Portland Police Bureau and the City have a website that is dedicated to the Department of Justice reforms,

the settlement agreement, the findings, documents, things that are related to the settlement agreement, and I would encourage you, as interested folks, to go and look at that.

That website benefited greatly from the cooperative agreement and input of amicus Albina Ministerial Alliance, who suggested that we include a robust listing of the events that related and community events on a calendar, which you can see on the left-hand side, and this is the place where we have posted our policy changes and, as the Department of Justice alluded to, it enables the public to very closely, and in realtime, monitor what it is the City is doing, how we're changing our policies. And in order to ensure that the public is -- we're transparent and that they have the ability to have input into the process of reform.

If you go to the website, you can also see that we have posted a number -- 88, in fact -- action items that have resulted from the Department of Justice agreement, and you will see that the City has implemented over half of the reforms in the agreement.

Those reforms still need to be independently analyzed by the Department of Justice, by the compliance officer we intend to hire, and by the community.

So we're not claiming that they are done, but we

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certainly have put an enormous amount of effort over the last two years into implementing these reforms.

One of the most dynamic and fully realized components of the agreement is the City's Behavioral Health Unit. I wanted to take at least a little bit of time to talk about what the BHU does because it is a central part of this agreement and has enabled the City to have a robust and specialized mental health component to our policing services.

The BHU is comprised of four interrelated programs that have enabled us, as I said, to provide specialty policing services in the mental health context.

First, BHU oversees and implements bureau-wide crisis intervention training, which, as I mentioned, began in 2008.

The City has required all of its frontline officers to complete at least 40 hours of crisis intervention training, and every year we reinforce that training through bureau-wide mandatory refreshers.

Some of you probably would like to know, and I certainly have heard you want to understand better what that training is. It benefited greatly from the input of a board of mental health providers, consumers, and it focuses on the challenges and barriers that people experience with seeking help, as well as the effects of

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the stigma from a diagnosis of a mental illness.

Officers hear directly from mental health care consumers, as well as from officers who have family members that experience mental illness.

Second, the BHU conducts enhanced crisis intervention training for officers who have volunteered to field mental health crisis calls. Now, when the bureau initiated the call for volunteers, we weren't sure what to expect, and the response was overwhelming. And in the first year that we provided this training, well over 50 officers enrolled and received 40 hours of this specialized training.

The City reissued the call for volunteers, and we will be training 40 more officers in May of this year. These officers are assigned to the patrols in each precinct, and they are the go-to responders and take responsibility for the mental health crisis calls that come in their precinct on their shift.

Third, the Behavioral Health Unit oversees the Service Coordination Team or SCT. SCT facilitates the provision of services to individuals who commit criminal acts and also experience mental illness or addiction. SCT has had documented success in connecting people with services and stopping a revolving door.

And, fourth, BHU deploys the mental health

1 crisis units. Mobile -- I mean -- sorry -- Mobile Crisis
2 Units. Mobile Crisis Units pair a clinician and an
3 officer who work together proactively with individuals in
4 advance of a mental health crisis, and this effort is
5 significant and could not have happened without the
6 incredible participation of Cascadia and, obviously,
7 Project Respond.

8 We've talked a lot about culture change, and I'd
9 like to play for you all a video that kind of gets at the
10 heart of that. It is a two-minute ride-along with an
11 officer and a Project Respond worker in the Behavioral
12 Health Unit.

13 THE COURT: And before you play it, let me just
14 put on the record, to make it easier for the court
15 reporter, I'll can you later just to give us a copy of the
16 video for a court record, but the court reporter does not
17 need to take down whatever is said on the video.

18 MS. OSOINACH: Thank you, Your Honor.

19 THE COURT: You may proceed.

20 MS. OSOINACH: Looks like the sound is not
21 working.

22 DEPUTY COURTROOM CLERK: It's got to be through
23 the computer.

24 THE COURT: What's that, Mary?

25 DEPUTY COURTROOM CLERK: It's got to be through

1 the computer, because our sound is.

2 THE COURT: Ms. Osoinach, if you want -- if you
3 can't get it fixed momentarily, if you want, I'll let you
4 come back as the first person after the next break. We'll
5 use the next break time to see what we can do with the
6 sound since it's not working right now. I'll let you play
7 it later today.

8 MS. OSOINACH: Thank you, Your Honor. I
9 probably won't take the public's time. I can summarize
10 the video for you. And it is online for folks that want
11 to watch.

12 The video just demonstrates as Officer Josh
13 Silverman, who's in the Behavioral Health Unit, along with
14 Cindy Haddack, who's a Project Respond worker. And in the
15 course of a call, they reach out proactively in response
16 to a patrol officer who had identified an individual who
17 was having increased contact with the police. They went,
18 they talked to the individual, just to form a
19 relationship, to let the person know what kind of
20 services, to have that friendly face; somebody that this
21 person could trust.

22 And then about 22 minutes after they had left
23 this individual, he became sort of florid in behavioral
24 crisis, and the police calls came in. And because the
25 Behavioral Crisis Unit had had interactions, they

1 immediately went back to the scene. They were able, just
2 through talking and through their prior relationship, to
3 convince this person that going to the hospital and
4 receiving treatment was going to be a good option for him.

5 As the officer in the video describes, placing a
6 hold on somebody means that you are taking their liberty,
7 and it is not something that officers do or should take
8 lightly.

9 In this case, what the officer's goal was and
10 what the officer was able to achieve was buy-in from the
11 first event. It's important to -- the training they
12 received and certainly for the Mobile Crisis Unit to build
13 relationships so that they can have that sort of effective
14 and trusting relationship with the people that we're
15 trying to serve.

16 The City also reworked its dispatch protocols.
17 I know the director of NAMI is absolutely right. The
18 details matter. If you have these resources but you're
19 not effectively deploying them, that defeats the purpose.

20 So one of the ways we made that more effective
21 was to alter the BOEC -- BOEC dispatch protocol to ensure
22 the ECIT officers were being dispatched. And perhaps even
23 more importantly, we altered our protocols in conjunction
24 with Multnomah County Crisis Line, and other responders,
25 to ensure that there were calls, when they were

1 appropriate, could be diverted so that police were not
2 acting as first responders in situations where that was
3 not most appropriate. And in 2013 BOEC transferred over
4 800 calls to the crisis line.

5 The City, in response to the Department of
6 Justice findings about force, it was very important to us
7 to immediately take action to revise our force policies.
8 We posted them online, on the website, and these policies
9 focus on de-escalation. They require officers to take
10 into account a person's mental status, and they are
11 stricter than the federal and state constitutional
12 standards.

13 These policies were bolstered by training that
14 focused on strategic disengagement. We increased our use
15 of role-playing scenarios and interactive exercises. And
16 in 2013 three of the five role-playing scenarios that
17 officers were trained on include a mental health crisis
18 intervention as a component of that exercise.

19 One of the most important parts of officer
20 accountability, as Chuck Gruber described, is making sure
21 that supervisors are aware of and the Bureau is aware of
22 and has vigorous oversight, particularly use of force
23 events. It's something we just have to get right.

24 Immediately during the investigation, we
25 received feedback from the Department of Justice that that

1 was a part of Portland's oversight system that was
 2 lacking, so we immediately instituted a procedure where
 3 supervisors respond to every use of force on scene. They
 4 conduct an investigation. They complete an after-action
 5 report. And then those investigations are reviewed by
 6 multiple places in the chain of command, but specifically
 7 also goes to a newly created position of the force
 8 inspector. This inspector will work closely with the
 9 compliance officer to develop metrics and analysis for
 10 determining whether or not we have complied with the
 11 agreement, but also whether or not the effects of our
 12 changes are producing results.

13 Now, there has been pointed criticism, and,
 14 Your Honor, you asked about -- sorry, the inspector -- you
 15 asked about the COCL producing quarterly reports.

16 The inspector has already begun that work.
 17 These reports are posted on our website. They include
 18 multiple data points, including data points about the
 19 race, gender of folks that police come into contact with.
 20 They're in graphic form. They talk about a number of
 21 reports we've written, the type of force that's been used.
 22 We break it down by precinct, as well as the different
 23 tools and -- and measuring when and what frequency they're
 24 used.

25 Now, there's been some pointed criticism that

1 this agreement should have had a court-appointed monitor
 2 rather than a compliance officer.

3 Many urge you to appoint a court monitor. Even
 4 if that were something that the Court could do, this is a
 5 settlement agreement. And though you pointed out that it
 6 is functionally for the purpose of the fairness hearing, a
 7 consent decree, it is not a consent decree. It is a
 8 settlement agreement. And settlement agreements,
 9 particularly in this case, are best monitored by the
 10 Department of Justice and the City's democratically
 11 elected officials, as well as the public, rather than a
 12 court monitor.

13 The COCL -- COCL. We call it the COCL. The
 14 COCL's primary responsibility is to provide all of the
 15 parties with an objective, unbiased analysis of the City's
 16 progress. And there's no reason to believe that the COCL
 17 cannot achieve this goal.

18 As I said earlier, the initial outcomes of the
 19 City's implementation should give this Court reason to
 20 believe that the remedies in the settlement agreement are
 21 adequate.

22 Although the City's initial results are going to
 23 be strengthened by independent analysis of the DOJ, the
 24 COCL, and the community oversight board, and there's much
 25 more work to be done, more data to be gathered, and trust

1 to be built, but our initial results are promising.

2 As I said earlier, the City's litmus test in
 3 negotiations was whether a requirement addressed the
 4 problems faced by the City and whether it was achievable
 5 in a practical sense.

6 It was that sense of practicality that led us to
 7 conclude that the way to address the lack of mental health
 8 care services in our community was to work cooperatively
 9 with other governmental agencies.

10 So rather than obligate the City to operate a
 11 mental health care facility, such as a drop-in center, the
 12 City accepted a requirement to work in cooperation with
 13 other governmental entities, such as the County and the
 14 State, and community care organizations that bear primary
 15 responsibility for delivering those type of services.

16 The City has followed through on that commitment
 17 by lobbying aggressively for increased funding for mental
 18 health services for the last three years. We included it
 19 in our legislative agendas for both the federal and the
 20 state. And though mental health funding, as the director
 21 of NAMI pointed out, is still not adequate, the -- Oregon
 22 did increase its budget by almost 20 percent for the
 23 Oregon Health Authority's Addictions and Mental Health
 24 Services. They budgeted over 60 million for
 25 community-based mental health services, but there were

1 4 million going to services for individuals in crisis.

2 Multnomah County has received an initial grant
 3 of \$500,000 to improve its community act teams, which,
 4 from the City's perspective, is a crucial part of
 5 bolstering our community mental health infrastructure.
 6 And the City has committed and certainly intends to
 7 continue to have a seat at the table so that we can ensure
 8 that the City and Multnomah County are receiving its fair
 9 share and appropriately directing the resources that it
 10 can receive from the State.

11 Achieving diversity in a police force is
 12 notoriously difficult for a multitude of reasons. The
 13 Bureau has achieved its 40 percent diversity hiring goals
 14 for the last two years, and, as a result, the City's
 15 police force more closely resembles the community it
 16 serves.

17 We also conducted additional baseline community
 18 surveys which are required by the agreement, and that has
 19 provided detailed information that's going to allow the
 20 City and the COCL and the Department of Justice to have a
 21 better sense of what the community's perceptions are of
 22 the police bureau and how we can improve those.

23 Perhaps most importantly, however, the Bureau
 24 now has several years' worth of data about its use of
 25 force. In the last two years force has steadily declined.

1 And since 2008 you can see that it has declined
2 significantly.

3 Many of you may be surprised to hear that in
4 2013, out of more than 350,000 calls for service, PPB used
5 less -- used force less than a quarter of a percent.

6 Perhaps even more significantly, PPB's use of
7 force during an arrest, which we would all assume to be an
8 event where force would be most likely to be used, PPB
9 used force 2.5 percent of the time. Those numbers are
10 extraordinary and I should say that is half -- almost half
11 of what the percent of arrests involving force was in
12 2008.

13 Those numbers are extraordinary by anyone's
14 standards, but the City realizes that oversight of force
15 and getting the community's buy-in and input of the
16 appropriate level of force, what is the appropriate
17 percentage, those are conversations we intend and invite
18 and want to have.

19 The numbers tell an important but an abstract
20 story. It's in the day-to-day interactions between our
21 call-takers, first responders, the Independent Police
22 Review Division investigators that complete the picture.

23 As Dr. Bennington-Davis said recently at the
24 awards ceremony, PPB highlighted the amazing work that
25 police bureau officers are doing when they're confronting

1 people in behavioral health crises.

2 In sum, Your Honor, we urge you to accept this
3 settlement agreement. It has been vetted by national
4 experts. It's unanimously supported by the City Council.
5 It does not infringe on the police bureau's labor
6 agreement, and it represents the future of the Portland
7 Police Bureau, and I would urge you to accept it as a
8 fair, reasonable, and more-than-adequate solution to the
9 remedy to be -- I mean, to the complaint in this case.
10 Thank you.

11 THE COURT: Thank you, Ms. Osoinach.

12 Does that conclude the City's presentation?

13 MS. OSOINACH: Yes, it does. Thank you.

14 THE COURT: Thank you, Ms. Osoinach.

15 I would like to hear next from the Albina
16 Ministerial Alliance Coalition for Justice and Police
17 Reform.

18 Ms. Albies or Ms. Curphey.

19 MS. ALBIES: Thank you, Your Honor. We will be
20 hearing from three of our members. First we will hear
21 from our co-chair Dr. LeRoy Haynes. Then we will hear
22 from Pastor Mark Knutson, who is the AMA coalition
23 co-chair of the policy and training subcommittee, and then
24 we will hear from Dr. T. Allen Becker, who is the other
25 co-chair of Albina Ministerial Alliance Coalition.

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1 THE COURT: Very good. You may invite Dr.
2 Haynes to approach.

3 DR. HAYNES: Thank you, Your Honor.
4 Thomas Jefferson, a founding father of our nation,
5 declared in the Declaration of Independence that all men
6 are created equal, but it took a bloody civil war in our
7 nation to begin to implement it, the Declaration, and to
8 enact the Thirteenth Amendment, prohibiting slavery; the
9 Fourteenth Amendment, the equal justice clause; and the
10 Fifteenth Amendment, giving the right to vote to
11 emancipated slaves.

12 Yet, even after these passages of these hallmark
13 amendments, there was a gap applying the law fairly, and
14 justly, and reasonable to black Americans, women,
15 communities of color, people of other gender, the poor,
16 the marginalized, and those with physical and mental
17 disabilities.

18 For over 100 years our nation endured a separate
19 but unequal doctrine that polarized our nation. It was
20 not until the Civil Rights movement of the 1950s and '60s
21 that our nation moved, once again, to eliminating the
22 injustice and inequalities in application of the laws of
23 our nation; the passage of the 1964 Civil Rights bill and
24 the '65 Voter Rights bill.

25 Today we stand before this honorable Court to

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1 once again plead our case for fairness, justice, and
2 equity in application of the laws of our nation for those
3 who are victims of unjust and unfair treatment by law
4 enforcement; particularly, the mentally ill and the
5 communities of color.

6 The Albina Ministerial Alliance Coalition for
7 Justice and Police Reform has a long history of advocacy
8 for police oversight and accountability here in Portland.
9 It was formed to pursue several goals. One, a federal
10 investigation by the Justice Department to include
11 criminal and civil rights violation, as well as a federal
12 audit of patterns and practices of the Portland Police
13 Bureau. Two, strengthen the Independent Police Review
14 Division and the Citizens Review Committee and the goal of
15 adding power to compel testimony; three of four, review of
16 the Bureau's excessive force and deadly force policy and
17 training with diverse citizens participating in the
18 purpose of making recommendations for the changes of
19 policies and training; four, the Oregon State Legislature
20 to review narrowing the use of deadly force by our police
21 officers; and, five, establishment of a -- a special
22 prosecutor for police excessive force and deadly force
23 cases.

24 The Coalition follows three principles: Embrace
25 the five goals outlined above; accept the principle of

1 nonviolent action, as enunciated by Dr. Martin Luther
2 King; work as a team to achieve these goals.

3 The Department of Justice inquiry and
4 investigation into pattern and practice of the Portland
5 Police Bureau reached beyond the single cases of Aaron
6 Campbell and James Chasse. The community saw this as a
7 tremendous opportunity to require a city that would not
8 resolve its problems to heed and enact reform that the AMA
9 Coalition and many community members have been seeking for
10 years.

11 As this Court may know, the AMA Coalition
12 participated in the confidential mediation process; but
13 all the parties and justice, the -- the AMA Coalition hope
14 was to strengthen the agreements specifically in areas
15 that we saw serious deficiency, as is public knowledge.
16 The mediation process did not resolve all of the changes
17 that were needed in the agreement.

18 The AMA Coalition, even with this, entered into
19 a collaborative agreement with the City and the Department
20 of Justice, in which the AMA Coalition agreed not to
21 object to the interests of the settlement agreement, but
22 would offer comment to the Court regarding areas where the
23 agreement could be stronger and would continue its
24 longstanding effort to reform the Portland Police Bureau.

25 We appreciate so very much the Court granting

1 the AMA Coalition a special role in this process and
2 continue to believe that the AMA Coalition should play a
3 role in the oversight and the implementation of the
4 agreement, should it be entered by the Court.

5 In that regard, the AMA Coalition sees many good
6 things in this proposed agreement and see this agreement
7 as an opportunity to set a foundation for oversight and
8 accountability and especially the Department of Justice
9 and the City and the community will continue to engage,
10 build upon the structures set by this agreement.

11 The AMA Coalition recognizes this as a
12 historical opportunity for our city, community, and police
13 department to bring about the necessary transformation and
14 changes in the Portland Police Bureau.

15 Specifically, the AMA Coalition supports the
16 agreement, and the following are reasons: One, change is
17 made in the Bureau's use of force policies, including the
18 policy must de-escalate use of violence as the resisting
19 from the subject increase; two, officers who are found in
20 civil court to have violated someone's right must be
21 subject to an Internal Affairs investigation, presuming
22 that they're guilty of misconduct, unless the evidence
23 shows that they are not; three, supervisors would be
24 trained to conduct annual performance reviews of officers;
25 and then, four, officers were banned from using offensive

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1 epithet, as well as the BHU criteria and training of the
2 C-I Team.

3 That said, the AMA Coalition hopes that this
4 agreement will have been much stronger and that there are
5 many areas which may be improved upon. We offer these
6 concerns as parties and the Court to consider the hope
7 that the parties will continue to engage around these very
8 important issues.

9 We hope that the Department of Justice, the City
10 of Portland, the Portland Police Association will hear the
11 concerns of the community and truly listen and engage in
12 meaningful implementation and assessment and to address
13 those concerns and hope that the Court will consider these
14 issues when and if compliance concerns are brought to
15 their attention.

16 Finally, although the AMA Coalition of Justice
17 and Police Reform does not see the settlement agreement as
18 a panacea for solving all Portland Police Bureau problems
19 within the community, it does call us to serve them. It
20 does call us to call the Portland Police Bureau to serve
21 and protect the community with fairness and justice and
22 integrity.

23 We do believe that it is an essential foundation
24 for the City of Portland, the Portland Police Bureau, and
25 the diverse communities and stakeholders to be utilized in

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1 transforming the Portland Police Bureau and to a true
2 community police force that will have fairness and justice
3 and integrity of all of the citizens and people of
4 Portland, especially the most vulnerable and the most
5 marginalized.

6 Thank you very much.

7 THE COURT: Thank you, Dr. Haynes.

8 I now would like to invite up Pastor Knutson.

9 MR. KNUTSON: My name is Mark Knutson, pastor of
10 Augustana Lutheran Church in Portland, also a member of
11 the AMA Steering Committee.

12 Judge Simon, thank you for the process you've
13 taken us through and continue to today.

14 I stand here, too, I just have to say, by way of
15 introduction, as one who returned with my wife from
16 Chicago after doing national work back in 1995 with our
17 four-year-old son, and first group I joined when I came
18 back to Portland, because of the history of civil rights
19 and human rights work in the city, was the Albina
20 Ministerial Coalition; a longstanding record, and the
21 coalition that has come out of the Albina Ministerial
22 Alliance is a part of that.

23 I do want to say, too, as a pastor, none of us
24 operate in a vacuum. We hear too many stories of our
25 members in our diverse parishes being pulled over or

1 stopped because of race. I was glad to hear you allude to
2 that earlier. My comments are not about that, but we know
3 in this city and across this nation that's a major issue
4 to address, especially in the police.

5 Also, I would say in May of 2007, as a pastor, a
6 man with mental health issues pulled alongside our church
7 on 14th and Knott. When I came back to the church, there
8 were over 150 police officers surrounding the church with
9 SWAT teams and rifles and snipers in our sanctuary
10 pointing out.

11 Of course you can understand there's a
12 tremendous disagreement. One commander understood that
13 when we met at 8:00 the next morning. The other, I'm not
14 sure he got that.

15 THE COURT: What year was that?

16 MR. KNUTSON: May of 19 -- of 2007.

17 THE COURT: Thank you.

18 MR. KNUTSON: Finally, and as a father, my wife
19 is of great African-American heritage. I'm of
20 European-American heritage. Our son, who's now a
21 22-year-old African-American male in the city, like every
22 parent of a young person of color, you lay awake at night,
23 when they get their driver's license and can go out at
24 night and come home. And not because of other youth so
25 much, but of the fear of them being pulled over.

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1 Coalition members, many of whom are pastors of large
2 congregations, are volunteers or staff, and
3 medium-to-small nonprofit organizations find themselves
4 frequently left in the dark regarding the City
5 implementation plans, including the recent revisions to
6 the Portland Police Bureau directives, despite the
7 collaborative agreement requirement that the City provide
8 as much advanced notice as possible, as well as public
9 posting of draft policies.

10 The various bodies created by the agreement and
11 existing oversight bodies, including the Behavioral Health
12 Unit Advisory Group, the Training Advisory Council, the
13 Community and Police Relations Committee, the Community
14 Oversight Advisory Board, the Citizen Review Committee,
15 and the Police Review Board should have a procedure for
16 sharing information with the public and with each other
17 regarding their activities.

18 The City should also apprise the public on
19 opportunities for input on implementation of the
20 agreement, such as the Portland Police Bureau directive
21 revisions selection of personnel in public hearings. In
22 addition to sharing this information at public locations,
23 the City should provide this information in one
24 centralized online dedicated location, dedicated to the
25 implementation of the agreement.

1 So let me go to my comments. As clergy, as
2 imams, as rabbis in this city, we were called to judge our
3 city by how the most vulnerable are doing, and we are
4 called to work with a vision. So whether we are Muslim,
5 Jewish, Hindu, Buddhist, Christian, Native American
6 spirituality, the people of goodwill, vision pulls us
7 forward, and this agreement today is part of a much larger
8 vision. It's a step in the direction, but it's not the
9 answer to the vision, as we all know, by any means.

10 It's a step that will get us to a day when we
11 will have true community policing, whether as a mutuality
12 of the public and of those who wear uniforms.

13 So let me speak to the agreement itself. We
14 will speak to issues that will help strengthen and enhance
15 the -- the implementation and the enforcement of the
16 agreement.

17 First, the agreement should require greater
18 inclusiveness and transparency in police bureau training
19 and policy-making, especially as it affects people with
20 lived experiences of mental health illnesses.

21 The AMA Coalition is wary of the effectiveness
22 of the agreement, to the extent it creates new oversight
23 committees and mechanisms without providing for sufficient
24 notice to allow for meaningful public participation.

25 For example, the Albina Ministerial Alliance

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1 While the collaborative agreement between the
2 Department of Justice, the City of Portland, and the AMA
3 Coalition calls for such information to be made available
4 on one's website and the Bureau has a Department of
5 Justice tab on its website, it's been our observation this
6 has not happened in a timely manner so as to adequately
7 inform the public.

8 We recommend the Bureau create an email alert
9 list -- an email alert list -- so that when new
10 information is posted to that site, interested community
11 members will know about it.

12 In addition, the AMA Coalition suggests, as
13 means to improve the Portland Police Bureau transparency
14 and inclusiveness, the following: The annual report
15 required by the agreement should require the Portland
16 Police Bureau solicit and include comments from the
17 community. Community members, the majority of whom are
18 people in recovery from addiction or mental health issues,
19 should make up the selection committee for the management
20 of the Behavioral Health Unit. And members of that unit
21 should be publicly disclosed.

22 The Behavioral Health Unit should include at
23 least two persons with lived experiences of mental
24 illness, and a staff person should be available to
25 facilitate their involvement.

1 People of color and people with lived
2 experiences of mental illness or addiction should
3 participate in the delivery of training, and, to the
4 extent consistent with public safety, training curriculum
5 should be a matter of public record.

6 Final point: The AMA Coalition seeks further
7 improvements to the current police accountability and
8 oversight system.

9 The agreement makes several changes regarding
10 existing police oversight bodies. The AMA Coalition
11 believes that these changes do not go far enough in
12 addressing the current system's flaws, which fundamentally
13 relate to a lack of genuine independent oversight.

14 Toward that end, the AMA Coalition and community
15 groups will continue to put pressure on the Department of
16 Justice and the City to direct the Office of Independent
17 Police Review, the IPR, to conduct its own investigations
18 and require the City to enable the IPR to conduct
19 meaningful independent investigations.

20 Additionally, the Albina Ministerial Alliance
21 Coalition believes more independence and transparency in
22 the police review board process is necessary.

23 Specifically, the AMA Coalition believes that
24 the supervisor of the involved officer serve in an
25 advisory capacity only and does not vote on the Board's

1 recommendation.

2 In addition, the AMA Coalition believes the
3 Police Review Board should allow access to the complainant
4 in those cases where the complainant is a community member
5 and allow victims or family members of officer-involved
6 shootings and deaths the right to appeal the review
7 board's findings to the Citizen Review Committee.

8 The AMA Coalition also believes that the Citizen
9 Review Committee should be strengthened in two ways:
10 First, the CRC standards of review should be whether the
11 preponderance of the evidence supports the findings,
12 rather than the current reasonable persons standard.

13 If the CRCA -- CRC weighs the evidence and
14 believes there is a preponderance of
15 supporting -- supporting a certain finding, they should
16 not have to defer to the officer's commander if that
17 commander's finding is different.

18 Finally, the Citizen Review Committee's time to
19 complete appeals should be 90 days, not 21 days.

20 As volunteers, the CRC member's time is limited.
21 They should not be required to speed up their review
22 process to make up for delays and backlogs in
23 investigations conducted by the city -- paid city
24 personnel.

25 CRC members have testified in front of the City

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1 Council and we believe will also attest here today that
2 the time frame is too short for them to consider these
3 cases, and we would support that assertion.

4 Again, I think we have said many times in the
5 coalition our goal is that every person in the city would
6 go home safe at night -- our citizens, our police
7 officers, all of us -- and the work that is ongoing is
8 about that.

9 And so we're thankful for this step, but we know
10 there's a broader vision and a bigger vision. We thank
11 the Department of Justice and the City of Portland, and
12 the Portland Police Association of being at the table, but
13 we know we are all working from that vision. From quoting
14 Isaiah -- or borrowing from Isaiah, the prophet, a ruined
15 city may be a watered garden of justice and peace where
16 every person is safe, where we will build up the
17 foundations of many future generations of all backgrounds,
18 and where we will be restored of the breach and repairs of
19 our own city streets to live on.

20 Thank you, Judge Simon.

21 THE COURT: Thank you, Pastor Knutson.

22 I would like to invite Dr. Beckel.

23 DR. BECKEL: Good morning, Your Honor.

24 THE COURT: Good morning.

25 DR. BECKEL: Counsel, parties, and to the

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1 public, I'm Allen Beckel, president of Albina Ministerial
2 Alliance, serving as co-chair of the AMA Coalition. The
3 agreement should eliminate the 48-hour delay before
4 investigation to intervene or to interview an officer.
5 The AMA Coalition has serious concerns with the settlement
6 agreement to the extent that it does not abrogate the
7 48-hour rule in the current collective bargaining
8 agreement between the PPA and the City.

9 The CBA, at Article 61.2.1.3 invites that an
10 officer shall receive 48 hours' advance notice before an
11 interview for an Internal Affairs investigation. A less
12 delay will jeopardize the investigation and criminal
13 culpability is at issue.

14 There is no valid justification for this ruling.

15 The AMA Coalition recognizes that the agreement
16 requires that the PPB must request that the involved
17 officer provide a voluntary on-scene walk-through and
18 interview unless the officer is incapacitated.

19 The AMA Coalition notes, however, that the
20 48-hour rule jeopardizes all internal investigations. To
21 the extent it provides an officer time to prepare his or
22 her response, further recalling and working towards a more
23 consistent recall of perceived facts. Perhaps, most
24 importantly, the notice period undermines public
25 confidence in the fairness of the investigative process,

1 which, in turn, may serve to deter people from reporting
2 misconduct --

3 The AMA Coalition recognizes that other parties
4 in this suit have struggled with the same issue of how to
5 question police officers subject to an investigation
6 without violating the officers' collective bargaining
7 rights.

8 The AMA Coalition, however, contends that the
9 timing of interview of officers under investigation is not
10 a mandatory subject of bargaining. The Coalition, along
11 with other community groups, therefore, urge the City to
12 exclude this provision from the collective bargaining
13 agreement to no avail.

14 Moreover, the memorandum of agreement that
15 resolves the PPA's opposition to the settlement agreement
16 reserves the PPA's right to grieve issues related to
17 obtaining officers' statements in investigation and, thus,
18 leaves uncertainty on this important issue.

19 Procedures for modifying the terms of the
20 settlement agreement should provide for direct community
21 input. The agreement provides that two years after his
22 execution the Department of Justice is to conduct a
23 comprehensive assessment to determine whether its outcomes
24 have been achieved and that the DOJ and the City can
25 jointly agree to modify the agreement at that time.

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1 understanding that the Department of Justice would not
2 rule out having the AMA Coalition participate in some
3 manner in the enforcement of the agreement through its
4 resolution process, as described in 181 through 187 of the
5 agreement.

6 As stated by Dr. Haynes, the AMA Coalition does
7 not object to the entry of this agreement, and we see the
8 positive aspects as an opportunity to set a floor, to set
9 a foundation. Not a ceiling. Not the end. And that this
10 agreement must be monitored so that the City and the
11 Portland Police Bureau can be held accountable by a higher
12 and more powerful group than the City itself or the
13 Association or the Bureau.

14 We expect that as this agreement goes forward,
15 to see positive aspects as an opportunity to, again, to
16 keep this foundation and to keep sustainability.

17 While we do appreciate those things that the
18 City has so greatly endeavored to take, the charts that
19 shows the reduction in the use of force and the arrests,
20 that they have gone down, we must, however, remind the
21 Court and the public and the Association, and all
22 attorneys present, that for years prior to the findings
23 there, the Albina Ministerial Alliance, along with the
24 community, yelled, screamed, shouted for reforms. We have
25 submitted over 50 demands, as we look back over the cases

1 The agreement further states that the Community
2 Oversight Advisory Board, known as the COAB, may make
3 recommendations regarding the implementation of the
4 agreement to the compliance officer/community liaison, or
5 the COCL, who, in turn, may make recommendations to the
6 City.

7 This process needlessly adds layers of the
8 bureaucracy, as opposed to providing direct public input
9 in the Department of Justice's and City's negotiations
10 regarding modifications. The AMA Coalition has learned
11 through its long involvement in police reform work in
12 Portland that the public's voice is often lost in such
13 bureaucracy.

14 The AMA Coalition members have participated in
15 numerous committees, stakeholder groups, and other
16 advisory boards related to police issues, only to have
17 their efforts ignored with the City and the Portland
18 Police Bureau-like policy.

19 The AMA Coalition, therefore, believes that the
20 agreement should provide a mechanism for more direct
21 public involvement and input in the negotiations regarding
22 potential modifications of this agreement.

23 We welcome any opportunity, continue
24 to -- excuse me -- to continue to play a very strong role
25 in the oversight and accountability. It's my

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1 where excessive force and deaths have occurred, and it all
2 fell on deaf ears and no action.

3 We only saw some action moving once the DOJ
4 submitted a letter of findings. And so at that point they
5 seemed to say you finally caught us doing something, and
6 we need to make some changes.

7 I therefore contend, Judge Simon, that upon and
8 if this agreement is entered, that it must have the
9 oversight of the Department of Justice, as well as be
10 retained by this Court and you, as judge. I fear that if
11 it is not, that what will happen is that the same that we
12 had prior to 2012, September, will again begin to happen.

13 I believe that the actions today, which I will
14 contend to say are good, have only come because the
15 Department of Justice has finally put a hand down and said
16 it must end what is happening in this city. Even though
17 the statistics, therefore, those that have been recorded,
18 show that they have been coming down and are less, I would
19 contend that if we would ask many more people in this
20 community, we would find that when the stops occurred,
21 when the arrests occurred, there is much more happening
22 than what we have on paper.

23 So we again want to thank the Court for its
24 thoughtful and meaningful consideration of community input
25 in this process, and we look forward to more effective

oversight and implementation as laying the groundwork and foundation for true systemic change to come to the Portland Police Bureau.

Once again, reiterating we do not object to its entry, should it be entered; but we also ask and we stand in total support that there must be this great oversight. And, if I might add, with a hammer; and, if I might add, with some bars on a door. And if the PPA and the City, the Portland Police Bureau, finds themselves out of compliance, it will not be days and weeks and months and years, but the hammer will come down quickly and swiftly; that they will be in compliance and they will treat all of our citizens fair, equal, with integrity and respect.

And, again, we are always interested that everybody, from the ones sleeping on the streets to the ones residing in the office of mayor or residing in the headquarters offices of the chief of police, even in the union halls, that they all go home safely without excessive force being used against those with mental illness, those perceived with mental illness, nor against those of our community, regardless of their ethnicity, and especially what has happened to the African-American community.

Thank you, Judge.

THE COURT: Thank you, Dr. Beckel. I'll observe

that although the Department of Justice has the hammer, the Court has a gravel, and sometimes people confuse the two, and there are some similarities.

Anything further for AMA Coalition, Ms. Albies?

MS. ALBIES: No, Your Honor. Thank you.

THE COURT: Thank you very much.

We're now going to turn to the public testimony portion of this.

As I mentioned, we'll start with witnesses from Consult Hardesty. I think I have three witnesses on my list. Jo Ann Hardesty, Roger Hardesty, and Jeri Sandoval-Williams; whatever order you choose to present that is fine with me.

To the public, if telephones could please be turned off, please, in this courtroom. If it's not a telephone, let me know what it is.

All right. Then after we hear from Consult Hardesty, I think we have two witnesses from the NAACP, and then I would like to hear from Tom Steenson, Mr. Alexander from the Urban League. We have three witnesses from Portland Copwatch and, again, whatever order they wish to present is fine with me. I believe we have Ms. Eng and Mr. Pickering, Jamie Troy from Citizens Review Committee, Mark Chasse, and then I think we'd like to end, before a brief lunch break, with Shannon Pollen

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from BHU, and then we'll take 15 minutes for lunch whenever that might be.

Ms. Hardesty, welcome.

MS. HARDESTY: Thank you, Judge Simon. I hope we don't make this too difficult for the timekeeper. But my goal is to introduce the Consult Hardesty team, give four minutes of testimony, turn it over to Jeri, and Jeri will turn it over to Roger, and then I will close. And so if it's okay with the Court, that will be the order we'd like to proceed in.

THE COURT: That is fine. You may proceed.

MS. HARDESTY: Thank you so much.

The Honorable Michael Simon, members of the court, and the esteemed public in the room, Consult Hardesty respectfully asks that you reject the settlement agreement and direct the parties to prepare for trial.

A verdict that Portland police officers are guilty of using excessive force against the most vulnerable people in our community is the only fair and reasonable approach to solving the problems identified in the DOJ's investigation.

To that end, Consult Hardesty submitted to the DOJ and others a CCRA, which is called a Civilian Compliance & Review Authority, which is the process to create a bifurcated system of accountability. It is

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designed to build capacity in our community to engage in police oversight.

In addition, the CCRA envisions a process that will engage the broader community through training, workshops, and convenings, thereby creating a motivated and constitutionally aware community who will become the ultimate protectors of our civil rights.

The CCRA continues to be presented as a draft, because we desire to incorporate the best and brightest minds to provide us the best practices and experience for consideration. Not just our own conclusions, but drawn -- not just our own conclusions.

In a citizen oversight committee and law enforcement study released by California State University Fullerton Center for Public Policy, they note: Oversight bodies with no statutory mandate have little leverage in their negotiations with police agencies and can become symbolic groups rather than a force for change in reform.

I'm so sorry, Judge. I forgot to give to the clerk a packet that we put together for the judge, and I'll just head back.

To be effective, citizen oversight committees must be skillful at getting policing issues on the city's agenda so that officials will address rather than ignore, suppress, or minimize problems in policing agencies.

1 A truly independent oversight process would be
2 independent of the police and city hall. It would be
3 publicly acceptable, sensitive, and respectful to
4 complainants who have already suffered harm.

5 In addition, it would provide "know your rights"
6 training in schools throughout the city of Portland. It
7 would assist community members in filling out a complaint,
8 rather than telling community members they can't find the
9 officer's name.

10 It would identify and advocate for legislative
11 action at the state, at the local, and at the county
12 level. It would also not be an apologist for
13 unconstitutional practices by Portland police, but,
14 rather, work to identify those officers and hold them
15 accountable.

16 A truly independent police review process would
17 evaluate civil payouts on court awards in jury verdicts in
18 police misconduct cases. It would ensure that the police
19 commissioner, the police chief, City Council, and others
20 with responsibility identify policy, training,
21 supervision, or other deficits in order to prevent a
22 repeat of that behavior that led to the award in the first
23 place.

24 What police learned from lawsuits is evidence
25 JAH4 in your packet, sir, states many police forces are

1 using information gleaned from civil suits to improve the
2 performance of their officers.

3 Imagine a police oversight process owned by the
4 people of the City of Portland rather than the police.
5 Each involved person would have a stake in creating a
6 system. Each person, police and civilian, would be
7 treated fairly. Those harmed would be provided services,
8 regardless of their status.

9 It is my hope that by directing the parties to
10 trial, the community will be left to work for real reform.

11 At this time I would like to turn the podium
12 over to a community member. Jeri?

13 MS. SANVOL-WILLIAMS: Thank you, Your Honor.

14 My name is Jeri Sandoval-Williams. I am a
15 mother, a grandmother. I'm a mother of four, a
16 grandmother of nine. Five of those grandchildren,
17 African-American, live here in Portland.

18 I have, in the past, as a community member,
19 been -- I have filed two complaints against the police;
20 one for racial complaints and one for the police just not
21 doing their job, not writing a report so I could
22 abstain -- obtain a stalking order from a pimp that was
23 stalking me at the time. I'm also a survivor of
24 posttraumatic stress disorder intergenerational trauma and
25 severe depression, as is my 26-year-old son, Jamie

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1 Anderson.

2 I also must say that I work for the City of
3 Portland in the role of the Diversity and Civic Leadership
4 Program manager, which seven years ago brought new voices
5 to the City of Portland by engaging and building capacity
6 in communities of color and immigrant refugees.

7 Prior to that, I had been a community activist
8 and organizer working in communities of color and
9 immigrant refugee communities and low-income communities
10 for the last 15 -- for the last 20 years total.

11 One of -- one of the things that I focused on
12 most was the Environmental Justice Action Group, which I
13 was the director of.

14 I'm very nervous today. I need to tell you that
15 I'm not here as a city official, because I'm not working
16 off the clock today. As I hear the testimony, I know the
17 numbers that are displayed by the Portland police display
18 a decrease. The decrease is not because you're not doing
19 it still. The decrease is because people are complaining
20 less because they have less faith in you than they ever
21 have before. That's the decrease.

22 While I made it successfully to the -- through
23 those two claims I filed many years ago -- one from an
24 officer who was screaming racial epithets into my face and
25 my nine-year-old African-American daughter --

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1 THE COURT: When was that?

2 MS. SANVOL-WILLIAMS: I'm trying to remember.
3 It's in their records. I worked with Michael Hess with
4 the internal audit. At that time I was told he was given
5 the highest level of discipline that he could. For
6 someone who's been harmed, someone who feels re-violated
7 when issues like this come up, who have lived with
8 posttraumatic stress disorder and depression their whole
9 life, it was -- it's hard to accept the fact that someone
10 can say he was brought to the most -- you know, the -- the
11 highest level of discipline we can give him. Years later
12 he was fired for some other thing.

13 But the issue was I didn't want discipline. I
14 wanted them to change what they do. He wanted
15 them -- it's not -- you know, a couple of years ago we
16 adopted this word the "culture of the police" and it's so
17 cool now that we use this word "culture of police," where
18 we -- before we just talked about people who were doing
19 bad things for people, the people who had power that were
20 allowed to do bad things to people in the community.

21 The word I'd like to introduce today is mindset.
22 Being someone who's worked in communities of color my
23 whole life -- I'm 52 years old -- what I know is that we
24 can say that we, in our community, have a culture. I -- I
25 married my second husband, who's African-American. My

1 children are African-American. We got pulled over several
2 times between 1996 to 2005 -- at least ten times -- being
3 told that we fit a profile, we fit -- a suspicious
4 character was out there while we were driving, my husband
5 and I, through the community. We were pulled over. At
6 times we were stopped. At times -- one time we were
7 thrown out of our car and told to walk home.

8 So when I hear about all of these things, it's
9 like if you live in north and northeast Portland you know
10 them to be true. I have several friends who were beaten
11 by the police, who never -- who never complained, because
12 they knew it would get them nowhere.

13 I'm a very spiritual person who says God -- you
14 know, God did not give us more than we can handle. My
15 son -- as an -- as an official, I've got my life together.
16 I've been in therapy. I've been in recovery for 25 years.
17 Life is great. I ran for office last year. But the
18 reality is then my son, who suffers from PTSD and severe
19 depression, is 26 years old, was beaten by the Portland
20 Police. And according to the report -- which you don't
21 get if you file IPR right away. They will not give you,
22 as a citizen, a report, because they say it's an ongoing
23 investigation. You cannot talk to anyone. The doors are
24 closed.

25 You, as a community member, are told -- for me,

1 I was told, "You can't advocate for him." He has the same
2 disease as I have. "You can't advocate for him. He's an
3 adult. He has to do it himself."

4 So what's happening is successful bullying to be
5 interrogated, to interrogate mentally ill people so that
6 they -- they turn around and say, oh, okay, never mind.
7 Forget it.

8 What I want to know is when he was given -- when
9 I was -- when he was interrogated by the police officer, I
10 called the Internal Affairs. I have a list of emails
11 between myself, staff of the City, other police officers
12 that have said, "Oh, he was interrogated? He has the
13 right to come in for a one-on-one interview."

14 So when I called the -- when I called the
15 interviewer back to request it, he said, "It's over. The
16 report is over. There will be no more interviews."

17 The report is full of lies. The report is
18 someone who assumed that this 26-year-old kid, who
19 medicates himself with alcohol and was arrested and was
20 initially just pulled -- just pulled over because he was
21 urinating between two cars waiting for the bus, and then
22 he got beat, he got hogtied, he got thrown in the back of
23 a car. He got a spit sock placed over his head. He
24 walked the one block over to my office, between the
25 Justice Center and the City -- and City Hall, where I

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1 work, covered with contusions and bruises and had to go to
2 court that same day because the officer charged him with
3 harassment for spitting blood out of his mouth after the
4 officer punched him.

5 The results are there is no justice. The
6 results are there is no transparency in the current -- in
7 the current plan. The results are no one should ever be
8 able to have a collective bargaining unit that allows you
9 to mistreat people. And, in this case, I believe the
10 Portland police do. Thank you.

11 THE COURT: Thank you, Ms. Sandoval-Williams.

12 Will you retrieve the water cup.

13 MR. HARDESTY: I'll take it. My name is
14 Roger David Hardesty.

15 THE COURT: Mr. Hardesty, is the -- you gave me
16 something different.

17 MR. HARDESTY: I'm the minority partner.

18 THE COURT: You gave me something different from
19 what Jo Ann Hardesty handed me?

20 MR. HARDESTY: Yes.

21 THE COURT: Thank you.

22 MR. HARDESTY: Thank you, Mr. Geissler, for
23 giving us a shout out there. That felt good.

24 Consult Hardesty has been participating as a
25 married unit since the police plan to address racial

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1 profiling brought us together. And so we've been
2 participating here in this conversation since its
3 inception.

4 So, essentially, it's my belief that it's the
5 people's responsibility to protect their civil rights and
6 that that is what's going to create long and sustaining
7 remedy to the findings.

8 What happened -- my last testimony was 120
9 seconds at City Hall on a document we didn't see. It was
10 like in a pile on the table as we walked in. So all of
11 the analysis and prepare work that we had done was on a
12 document that hadn't even yet been introduced. So I
13 pushed back on the assumption -- on the -- we participated
14 mightily in the investigation, but this drawing together
15 of an agreement, in secret, without the public
16 deliberation, is really problematical, and I think it's
17 going to be reflected in the results of implementing it.

18 We observed, by broad analysis, that the
19 agreement before us is police centric. We are reminded of
20 the duplicity or duality of employing the city attorney to
21 simultaneously protect the City from fiduciary harm while
22 also relying on fact-finding by that office when discovery
23 misconduct might contravene their first role; right?

24 So the DOJ has other goals, including
25 surveillance, intelligence gathering, prosecutions, that

1 they rely on the City of Portland and the Portland Police
2 Bureau to conduct.

3 And I think it is through that prior existing
4 relationship that this -- this agreement puts police in
5 charge of the remedy. I think as a victim there's another
6 perception. That's a victim perception.

7 The bargain before us makes perpetrators largely
8 responsible for remedy. This is unjust. Given the
9 plentitude of resources available outside of PPB, it's
10 unreasonable. And we're shocked that the delivery of
11 services to those who have been deeply humiliated and
12 misdirected in the criminal justice system, as outlined in
13 findings pages 12 through 13, 16 through 18, and
14 elsewhere, for their mental health challenges is hereby
15 made the responsibility of police. Their long record of
16 abuse makes this an unreasonable choice.

17 A simple analysis demands that, A, we protect
18 victims. Intervention must now be carried out with those
19 with more appropriate skill sets. Police detain us.
20 Firemen protect us from harm. Paramedics, by character
21 and training, nurture those in need.

22 So Jo Ann talked a little bit about the CCRA,
23 the community compliance authority, and Jo Ann has talked
24 about one feature of that that we had introduced. It was
25 really a bifurcated process. One is just to

1 see -- oversee all the shenanigans that are going to go on
2 between these lawyers now while retaining the aspirations
3 of the community to go ahead and address racial profiling
4 in these other matters, ending up ultimately with a change
5 in charter.

6 We think anything less than that is going to be
7 arguing about how many Taser cycles are legal. It's not
8 going to get to the larger problem, because if it's not in
9 this agreement and outlined with mandates behind it, it
10 won't get done.

11 THE COURT: So you're saying anything less than
12 a change in the city charter? Did I hear you correctly?

13 MR. HARDESTY: Aspirations. I'm talking about
14 like an aspirational channel. There's a huge pent-up
15 desire which we would hope to focus towards the city
16 charter, and so those aspirations will be -- will not be
17 met by this agreement.

18 The soft language on the police plan to address
19 racial profiling, let's just, you know, hope that they
20 implement it in 2014, '15, '16. It was passed in 2009.
21 So I think what I better do with my remaining time is just
22 kind of rush you through the evidence that I have provided
23 to you, and I've given you a list of my intended written
24 testimony.

25 If we're talking about the Bureau

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1 of -- BO -- BHU, Behavioral Health Unit, okay,
2 October -- I go to their website to see if they actually
3 exist, you know, and if they're up to date.

4 They describe in their October newsletter that's
5 posted up there that somebody called and was -- posted
6 something on Facebook. It worried them. They go and find
7 out this guy's email account. Then they realize oh.
8 Well, we can actually, from that email account, get the
9 provider to give us his phone number. They begin to call
10 him over a series of days. He doesn't respond, but he
11 takes down that post off of Facebook thing.

12 So then they draw, through their resources, the
13 guy's home address. Now the Behavioral Health Unit is
14 going to his home over a matter of days demanding that
15 they talk to him.

16 So let's pretend the COAB find this under the
17 current proposed agreement; right? And they go, gosh, we
18 have constitutional violations. We've got some privacy
19 violations. A warrantless search and stuff like that;
20 right? We contend that this agreement will not allow the
21 COAB to move over there.

22 If I have -- I cite the specific language that
23 talks about what resources the City will make available to
24 this body, and they -- they narrow it down to what's
25 within this agreement; right? They talk

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1 about another -- when they talk about police, they are
2 really robust. We will get you the resources, the best
3 practices, and modern day Dick Tracy, but when they
4 talk -- they don't mention you get, like, photocopying
5 services if you're the people. If you're in the victim
6 class, right. It's a completely unreasonable and
7 disparate solution that's been offered.

8 And so what I want to suggest is even if the
9 COAB gets together and they say, you know what, times are
10 changed, and we now have severe concerns about
11 surveillance or stop-and-frisk, the DOJ will write it down
12 as our partners. They'll come up with an agreement, the
13 disparate behind close doors, and they'll emerge with an
14 agreement that puts 36 new officers in the police bureau
15 and puts them in charge of delivery of Internet services.

16 They're putting all of the remedy in the
17 perpetrator's responsibility. So this is unfair.

18 What we really need to do is build resilience to
19 create -- to inoculate the people. So one of my cases of
20 evidence in here is about 17 percent of those exonerated
21 had pled guilty.

22 This service -- the SCT, that's got practices
23 that really should disturb you. You need to investigate
24 this on your own, because I don't really have the
25 authority to get underneath this, but it contains a secret

list of who is eligible for this intervention process. You know, these multiple repeat offenders. And then when they catch them in something else, what they'll do is they'll offer them an opportunity to get the chemical dependency treatment that they need, but it's based on -- it's a wholly extrajudicial process. That guy doesn't get, at that point, represented by a public defender or anything. What he's intending to do is to plead guilty so he can get the monkey off his back. And if we're starting to set up these processes which circumvent judicial review, I don't think it's in our best interest.

Just the other thing that I -- that I really enjoyed about being invited here was -- you are a guy that knows about finders of fact. You -- you know the value of evidence and testimony and judicial review, and this Portland model of placing the Independent Review Board within the auditor's office is not well suited. We really don't know what is going on.

The rejection rate is 77 percent right out of the box. That's the people who don't get through the door at the IPRP. One in ten of those is because they can't identify the officer.

This is not the body to be investigating police misconduct.

THE COURT: Although, the independent -- the auditor is an independently elected official, isn't it?

MR. HARDESTY: I would consider it an accountant. What I really need is a forensic --

THE COURT: Independently elected. I mean, if the voters don't like the job the auditor is doing, they can put in a new one, can't they?

MR. HARDESTY: I'm just talking about structures. I don't --

THE COURT: My point is I --

MR. HARDESTY: I can go a long time on where the political clout lies and how the DOJ is now covering for the mayor who's pulled out of the -- one of the pieces in your testimony will be that we had a Multnomah County crisis and assessment team designed after they stomped James Chasse to death, designed specifically for this remedy. And also in the evidence you'll see in 2009 the City was saying walk-in centers should be like an additional deal to this; right? And so now the mayor bails out of his per -- his long-term commitment to the most wrap-around services, the best that the victim class could get in favor of these drop-in centers, because they're acceptable to the police.

And so my -- my statement is that while the DOJ is watching and allowing this to go on politically, is

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that the victims are actually -- they have less availability of services. And the services they're facing --

I better get out of here.

THE COURT: You'll be back up in a minute.

Jo Ann wants to conclude.

UNIDENTIFIED SPEAKER: She still has six.

MR. HARDESTY: Oh, okay.

THE COURT: Thank you, Mr. Hardesty.

We'll -- we'll transfer your remaining time to Ms. Hardesty.

MS. HARDESTY: You'll yield a minute to your wife as a gracious husband. Thank you.

I want to conclude my testimony with some very specific information. What -- what we put together in the packages we provided for you, Your Honor, are things that we believe show the bad faith of this settlement agreement. And so I'll give you an example. Each summer Portland Police rolls out a new program that is supposed to make us feel safe in our community.

In 2012 it was Clean Slate. It was sold to the community as a program that was supposed to get guns off the street, because we had had a couple of shootings where young people had been shot around Jefferson High School.

So the results of this effort, in a 30-day

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period, 300 people were arrested on Northeast Killingsworth. Of those arrested, 163 were 30 years old or older, with 102 of them being over 50. Only 38 of the people arrested were under 18.

Why were they arrested?

125 were arrested for alcohol-related issues, which really sounds like a social service problem and not a police problem. 28 drug-related. Only .5 percent of those arrested had a weapon of any sort. It's unclear whether any gun was picked up in this effort.

Roll forward to where the DOJ is paying attention. Since the DOJ has provided oversight of the Portland Police, they've rolled out two new initiatives that are sure to produce unconstitutional behavior by Portland Police.

The first is a new community policing program called Stop and Pat. It's modeled after New York's Stop and Frisk.

Portland police are required to spend 15 minutes of each hour in engaging community members in conversation, but Portland police officers, based on an article that is in your packet, dated 12/19/13, in the Portland -- from the *Portland Tribune*, Portland police officers don't feel safe when they're engaged in a conversation with African-American and Latino youth unless

1 they have the ability to pat them down first. Then they
2 can chitchat and talk about what they're up to.

3 I allege we don't do the same thing downtown,
4 where we know we have a huge number of people with carry
5 permits; right? So we're not walking up to downtown white
6 business owners, saying, "Can we pat you down so we can do
7 our community policing job?" But, yet, that is supposed
8 to be acceptable behavior in communities of color and
9 low-income communities.

10 The second program just rolled out just a couple
11 of weeks ago by Chief Reese. It's the Prosper Portland
12 Initiative, which over-polices homeless community members.
13 It is -- it is to force them to move out of the site of
14 the downtown business entrance. This must be a violation
15 of the U.S. Constitution. Yet, the DOJ, the police
16 commissioner, and the City Council have been dead silent
17 on these new policies coming out of Portland Police.

18 We also believe the DOJ was deficient in a
19 development of this settlement agreement, because we just
20 don't believe police are the right people to go out on
21 mental health calls.

22 We're amazed that there wasn't more
23 out-of-the-box thinking. Why don't we send firefighters,
24 EMTs, people with mental health professional experience?
25 Who thinks a police officer -- we don't know if it's going

1 to be officer friendly or the ones that operate as if
2 they're a gang. We don't know who's going to show up on
3 our doorstep, and it's insulting to the community for us
4 to think that somehow 40 hours of training are going to
5 make all police officers appropriately the right first
6 responders.

7 So we're really concerned about that.

8 The service coordination team was slipped into
9 this project when a behind-door negotiations with the last
10 mayor and DOJ took place. It was a pet project of the
11 last mayor. But there was no public participation in this
12 process.

13 This is a program that provides you some
14 excellent social services if you plead guilty. And the
15 police get to decide who gets to participate, whose name
16 is on the list, and whether or not your name ever comes
17 off.

18 This is not acceptable. This is not -- this is
19 not -- which is why we believe this agreement is not fair.
20 It's not adequate, and it's not -- and it doesn't provide
21 justice to the many people you're going to hear from today
22 who have suffered real harm at the hands of our police.

23 In the current system that we have, that we call
24 Independent Police Review, isn't independent. It doesn't
25 actually review the police. It actually reviews reports

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1 that the police have written.

2 It is an incompetent system to get justice for
3 the community. When the DOJ came to town as a -- as a
4 child of the Civil Rights Movement, I was thrilled.
5 Because, as a child, I knew when the Department of Justice
6 came to town they were going to call out civil rights
7 violations, and they were going to hold the people who did
8 it responsible, and they were going to correct that
9 behavior.

10 What I see with today's DOJ is they're in
11 collusion with the people who are abusing people in this
12 community, and we are -- if you accept this settlement
13 agreement, you will give cover to political leaders who
14 refuse to act, to government entities who refuse to change
15 the laws, and to an accountability system that isn't
16 accountable to anyone.

17 And so we encourage this Court -- you will hear
18 from so many people today that you will be in tears. We
19 encourage this Court to please reject this agreement.
20 Make them go to trial. Make them come back with something
21 that is fair, equitable, and -- and reasonable for the
22 community. Not just for the police. Thank you.

23 THE COURT: Thank you, Ms. Hardesty.

24 Mary, will you get that cup of water? Oh, if
25 you want it, you can have it.

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1 (Section 3, Court Reporter Dennis Apodaca.)

2 THE COURT: We have two witnesses from the
3 NAACP. Who wishes to speak first? We will follow them
4 with Mr. Steenson and Mr. Alexander.

5 MS. TERRELL: First, I would like to apologize.
6 My first vice-president had to leave, and we thought he
7 was gone. He came back.

8 THE COURT: That's fine. Just state your name.

9 MS. TERRELL: Thank you very much.

10 I am Audrey Terrell. I am the current president
11 of the NAACP, the National Association for the Advancement
12 of Colored People.

13 As a retired international staff representative
14 from Detroit, I work very closely with men, women,
15 workers, children, seniors in addressing their rights.
16 And in doing that, I did it at a local level, a state
17 level, and at a national level. So in relocating and
18 retiring, I relocated to the Pacific Northwest, with a
19 passion to continue community activism. So to me it
20 remains at an all-time high, as in a priority.

21 As president of the NAACP, organizing and
22 fighting for human rights, is a great importance, more so
23 today than ever before. In attending the last hearing
24 that you had in December, I heard that you said you wanted
25 us to inform the community and the media on the settlement

1 agreement.

2 We went into action, the NAACP. We took on
3 instructions that would begin to move on the Court's
4 request. We had two talk shows with KBOO, Prison Pipeline
5 and Labor Talk. We went to faith-based community in north
6 Portland, northeast Portland, in east Portland. We did
7 educational forums at the Masons, and we would have done
8 more, but the weather delayed us quite a bit.

9 I am just saying all of this to let you know
10 that the NAACP is alive and well, and we are a community
11 interest. I also want to say one other thing, to
12 reiterate, I also am a licensed minister. So, therefore,
13 with that, I take on the helmet of the mandate of God to
14 be honest, just, and fair.

15 So I come in response to what you had said, that
16 we should put before the community to respond to the
17 settlement as fair, reasonable, and adequate. So the
18 NAACP went with the focus with that in the community. The
19 No. 1 response that we received from the community was
20 about the community liaison. Please let that person be
21 from the community, such as a pastor, certainly having
22 someone with integrity that stands for what is honest,
23 just, and fair, and by all means, concern about the
24 well-being of the community.

25 I also just want to pass my time out, but I am

1 in constant communication with the national NAACP in D.C.;
2 also with our state president, and he is here today. I
3 don't do anything blindly. I work hand in hand. When I
4 was conferring with him and the national about what was
5 happening here, he agreed wholeheartedly to come to speak
6 to us, and he is here today.

7 Before that, I am going to give some of my time
8 over to the first vice president of the Portland NAACP.
9 His name is Tony Funchess.

10 THE COURT: Thank you, Ms. Terrell.

11 Good afternoon, Mr. Funchess.

12 MR. FUNCHESS: Good afternoon to the Court, the
13 community, to the parties at hand. Yes, I am the first
14 vice-president, but I am a citizen of this community, and
15 so as I speak today and as I look at this situation, I
16 think back to Director Colette Peters of the Department of
17 Corrections when she spoke to the City Club of Portland
18 last year. She said 50 percent of the inmates locked up
19 require mental health; 47 percent of the men, 78 percent
20 of the women. She said that her agency is the largest
21 mental health agency in the state -- the Department of
22 Corrections.

23 It speaks to the issue that law enforcement has
24 taken on a role of addressing mental health, and that's
25 not what its role is. As long as this agreement pushes

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1 and allows that, we will continue to do harm to our
2 community. We will continue to do harm to those
3 individuals who have been least served by the system.
4 This agreement is to be fair, adequate, and responsible.

5 THE COURT: Reasonable.

6 MR. FUNCHESS: Reasonable. F-A-R. It sounds
7 like this agreement is far from that. It is far from
8 being fair, adequate, and reasonable in the fact that
9 police should not, as Jo Ann has spoke to, be the first
10 responders to mental health issues. Mental health workers
11 should be the first responders to mental health issues,
12 whether it be the fire department, EMTs, or the recently
13 graduated community health workers from the Urban League
14 program.

15 As a community, we have a response to the issues
16 in our community. This agreement does not serve us as it
17 stands. It serves to continue the status quo. It serves
18 to continue perpetuating what we have always had. So I'm
19 thankful that the DOJ is here and that you have brought
20 some weight to the imbalances of injustices that we have
21 been seeing here, but that weight is not enough.

22 It does not go far enough. A tree with no bark
23 dies. This issue is like a dog or like a tree that is
24 simply barkless. It has no impact. It has no real effect
25 that we can lean and depend on and be rooted in and

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1 grounded in and trust and believe that there will be a
2 change; that there will be a difference.

3 That's all that we're asking. We are tired of
4 watching our children become incarcerated. We are tired
5 of people being beaten in the streets. We are tired of
6 people being killed by police officers. So it does not go
7 far enough.

8 On a personal level, my son announced back in
9 October -- we were hosting a community event. I put him
10 on the panel to speak, because he is a graduating senior,
11 and he is a University of Oregon freshman in September.
12 He is a young African-American male, who is on the right
13 path, doing the right things, and yet, in October, he was
14 pulled over.

15 He asked the officers why, as any of us would.
16 And his response was: Just do what I say. That's not how
17 policing works. My son, being an educated young man, knew
18 what his rights were, and he asked the officer again: Why
19 am I being pulled over?

20 That response was met with two more cars
21 arriving. My son, being a young African-American male and
22 being a man, as he knows how he has been taught to be, to
23 stand up for himself, insisted on his rights being
24 observed. Why am I being pulled over? And then he
25 remembered: I want to go home at the end of this.

No child should ever have to decide about standing up for their rights when they are dealing with law enforcement, who is designed and in place to protect our rights. And when those individuals are the ones who are violating our rights, then there has to be a more fair, adequate, and reasonable change, and it does not sound like this agreement does that.

So I hope that at the end of this that there is some conclusion that allows us to feel comfortable with where we're headed, but from the community it does not sound so. So I challenge you to go back to the table and work it out or go to trial.

THE COURT: Mr. Funchess and Ms. Terrell, I apologize. I just received a request via the court reporters. They are trying to have an accurate record of everything that is said here. May I ask you both to please spell your last names.

MS. TERRELL: Audrey Terrell. T-E-R-R-E-L-L.

THE COURT: Thank you, Ms. Terrell.

MR. FUNCHESS: Tony, with a Y; last name Funchess. F-U-N-C-H-E-S, as in "Sam," S as in "Sam."

THE COURT: Thank you, Mr. Funchess.

MR. FUNCHESS: I introduce our state area conference president, Gerald Hankerson.

THE COURT: Thank you. Mr. Hankerson, I will

welcome you, but I will ask you to spell your last name.

MR. HANKERSON: I was going to start with that. H-A-N-K-E-R-S-O-N.

First of all, I would like to thank the Court for allowing me the opportunity and the City of Portland for allowing me to come down here from far away to have a conversation about an issue that I live far, far away from, even though I live actually close to the issue every day.

I travel around this country as the state president for Alaska, Oregon, and Washington and reminding you that the NAACP is the oldest civil rights organization in the country, in so many respects that we believe that we are experts when it comes to civil rights. We can trace it all the way back to the 1800s, all the way up to 2014, following the bloodline that have led us to be here, from Emmett Till, all the way up to today, having a conversation about what is right, what is fair, and talking about the police.

Now, I understand that this is a place, and I am sent here nationally to come here simply because, like you, we are monitoring this case. We are monitoring it, because it is indicative of what's going on in the East Coast, with what's going on in Washington state, Arizona, Florida, and now it is here in Portland. Believe you me,

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I was one that was wildly impressed the moment that I knew the Department of Justice arrived here, because many in our community finally thought justice, because those are always the ones that get it in the end, justice.

Over the last couple of years I have been a part of these places and a part of these conversations, while I see that justice has started being negotiated in backrooms, in settlement agreements, not willing to accept what the rulings have been determined at a national level, because the City is not willing to accept accountability for what you've determined.

And one of the starkest things I have learned since I have been here is the fact that I did not see one time the City of Portland actually address how you are going to deal with racial profiling on your beautiful display. That was blankly missing.

Secondly, of course, the City would want the Court to adopt this settlement agreement, because some people in the community would actually consider that a compromise to avoid the ultimate accountability to some action referred to as legislation, lawsuits, consent decrees. Those are the tools that you actually force.

Had the community voices been heard for decades, we would not be here. Had you heard the complaints and the cries and the screaming and the yelling from people

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who have been complaining about their babies are not making it home, their sons are killed in the streets, police just writing reports, and if you are someone who believes that the honesty written in these reports is actually accurate, then you are not living on the same planet that we are.

You can't keep hearing the same old -- the working definition of "insanity" is keep on doing the same old thing and expecting a different result. The last thing our community is, it is not insane, because we are a living experience that those on the other side of the tracks have yet to see or face, but then they come back and judge us. Not only did they come and ask us questions; they come and tell you what the solutions are on how to solve a problem they have yet to even experience.

I am saying to you, and others, that this is the real issue that is going on in America, the United States of America. We were proud to know that the Department of Justice was here in Portland to hold the -- I don't know where they went -- they were just there a minute ago -- but talking about the issues of police accountability.

This is a settlement agreement, because I know how the courts operate, saying that this is to prevent a potential lawsuit and the ramifications of that lawsuit,

1 so the judge's hands are tied. Of course, there are some
2 huge expectations of you, Your Honor, to be able to
3 oversee the monitoring process, to make sure that the
4 settlement agreement is lived up to, but it is not
5 far-reaching enough to say: Settlement of what and on
6 whose back have we settled?

7 Is it really a settlement to avoid litigation
8 that could be costly?

9 Is it really a settlement to avoid dealing with
10 an issue that has been plaguing our community for 100
11 years?

12 Is it really let's just deal with the mental
13 health issues, simply because avoiding the race issue
14 becomes too more complicated and complex, so we just avoid
15 that right now by a negotiated agreement to really start
16 talking about the real issue and start talking about race,
17 discriminatory, discriminatory actions, discrimination.
18 You name it.

19 Our communities are struggling. We get calls at
20 our office every day, every single day. I am state area
21 conference president for the NAACP. I have eleven
22 branches under my jurisdiction. There is not a single day
23 that we don't get a call talking about an action; that I
24 send out an investigative team to look into the matter.
25 We try to be unbiased, because we understand by a

1 historical perspective that we deal with these issues all
2 the time. But how do we get to a place to where our
3 community can actually start trusting people and working
4 with the police, because they are the ones who are
5 supposed to protect us?

6 Then the court system gets in place. And then
7 the Court negotiates collateral damage issues, whatever,
8 you name it, and it then becomes so convoluted that I even
9 go out there and tell anybody in my community what that
10 paper actually says. All they know is what they fear.

11 You can take that agreement out to any
12 neighborhood in Portland, Oregon, and hand it to the folks
13 in the community and say: Tell me what that says, and
14 they probably tell you what the top line says, because
15 they didn't go to law school. They wasn't part of the
16 negotiation. There was people negotiating behind their
17 backs.

18 But then at the end of the day, the City says:
19 We get the right to say that the Department of Justice and
20 the City of Portland have come to an agreement, when it
21 should have been: The Department of Justice has come to
22 an agreement with the community, not the City of Portland.

23 Still, that is the actual complaint again. How
24 do you negotiate with the people actually responsible for
25 their actions? And who are you representing? Who are

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1 your clients? It is the City. It is the community, not
2 those who get elected, because we so proudly say that we
3 actually went through a democratic process to put people
4 in place, but that don't mean we have got the right people
5 in place and hold them accountable.

6 The response continues to come over and over.
7 So they call me every day: Gerald, what can we do? I get
8 in the car, I get on the plane, I fly out here. I hear
9 the things being said. I work with AMA, understanding the
10 historical perspective of what brothers and sisters have
11 went through from ancestry, and here I am today, as the
12 president, seeing the same old thing we have been going
13 through for the last hundred years.

14 I am going to make it clear for the record:
15 NAACP is not here to stand in the way of what could be the
16 beginning for the settlement agreement. That is not our
17 goal. But as Vice-president Funchess said, it is not
18 far-reaching enough to have an impact on the people that
19 you actually came here for.

20 So while we celebrate a victory, it is really a
21 hollow victory, because when we walk away and say that our
22 job is done, hang up our tie, hang up our hat, and leave
23 the City of Portland and say: Strike another one. We did
24 good in Oregon. The moment you get on your planes and
25 head out of town is the moment they get back in their

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1 squad cars and going out and destroying our community.
2 That's the reality. I truly believe in my heart that each
3 of you know this. You know this. That's why you work for
4 the Department of Civil Rights.

5 When I think about what went on for Seattle for
6 the past year, which is why I have got to get out of town
7 in the next hour or so, because we are dealing with this
8 exact same thing right now. Even when you brought up the
9 fact of proof, the City still fought it and said: No, we
10 are going to fight that. We are not going to accept that
11 for legal reasons. What about moral reasons? What about
12 right reasons? What about realizing, looking in the face
13 of a young kid that has got his brain busted out simply
14 because he was walking down the street, and he didn't have
15 an ID because the cop said: You aren't telling me
16 nothing; get in the back of the car.

17 Then he comes up with some fabulous reason for
18 why you arrest him, and you see a knot on the side of the
19 head. He comes home and tells his father: Look what
20 happened to me.

21 What do you think that father needs or feels
22 like you want to do. Simply because it happened in your
23 community doesn't mean this isn't real.

24 Then you expect us to turn to the very system
25 that's supposed to hold them accountable who has

1 negotiated their lives away. Settlement. Settle for
2 what? What is our community supposed to settle for? A
3 document that looks good on paper. That's the same as the
4 Constitution that was written on some pretty document
5 before, but that doesn't seem to protect us much. So why
6 are we supposed to be happy about a settlement agreement
7 today, so we can close, finally close the chapter of
8 another issue? It is not closed here.

9 As the AMA has beautifully said, this has been
10 going on long before any of us have been living. The
11 question is, where are we going to reach the point where
12 we walk away from here and look at our young brothers and
13 sisters in the face and say: How do you feel living in
14 the community? Do you feel respected by the police? When
15 that kid says "yes," that's when I feel we have done our
16 job.

17 But as long as that kid is crying, as long as
18 that kid is scared to go down the street -- in some places
19 a kid is afraid to walk into the school because the first
20 person he sees is a man sitting there with a gun. They
21 are called the "school resource officer," when he is
22 clearly a police officer. They actually use this shield
23 to say: Hey, because we are here to protect the
24 community, because the community is not safe. In our
25 community, we are not safe because of you. They hide

1 behind the veil of brass, fear. We need this. And as we
2 come up with the old ideas, because your settlement said
3 to do this, do this, and they say we're going to work with
4 the City and the State to come up with different programs.
5 For me, that is nothing more than a police budget in
6 sheep's clothing. That's a reality.

7 The State is like: We have a \$21 million
8 deficit. Therefore, we can't do the program. Therefore,
9 the settlement agreement is voidable now, because we don't
10 have the money, worrying about people out in the community
11 is doing this free. We don't get paid to do what we do.
12 We do it because we care. Those that is sitting up in
13 plush jobs, living in high towers and high areas and
14 having office jobs on the corner is living this life every
15 day looking down on people like us, thinking we are here
16 to protect you, but you can't even look us in our face,
17 dealing with our issues.

18 And the next time you come down to the community
19 and talk to us, rather than to tell us what we need to do,
20 you need to ask us first. Come to us before your
21 decisions are made.

22 That's our position on this, Your Honor. Again,
23 for the record, the NAACP do not oppose the beginning of
24 what could be a beautiful thing, the settlement agreement.
25 We understand that a settlement agreement, of course, is

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1 not the end all/be all, because it is just a process here.

2 Of course, the City wants the settlement
3 agreement because, trust me, it is like, whew. So, again,
4 as state president, we don't oppose the settlement
5 agreement, but understand, as the AMA and others have
6 clearly said to you, it has to be far more reaching than
7 what it is.

8 Thank you very much for your time.

9 THE COURT: Thank you very much, Mr. Hankerson.

10 Thank you, NAACP representatives.

11 Mr. Steenson, are you here? Come on up, sir.

12 Welcome.

13 If you could spell your last name, sir.

14 MR. STEENSON: S-T-E-E-N-S-O-N.

15 THE COURT: Thank you.

16 MR. STEENSON: Your Honor and community, with so
17 limited time to talk, I can only probably cover a few of
18 the reasons that I have for why this agreement should be
19 rejected.

20 I am a civil rights attorney for over 30 years.
21 I have represented victims and their families against
22 Portland police officers and the City of Portland. Most
23 of those cases involve people suffering from mental
24 illness and emotional crisis, African-Americans and
25 Latinos.

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1 Regarding the use of force, I have taken
2 countless depositions of officers accused of using force
3 to excess, their supervisors, including sergeants up
4 through the ranks, including Chiefs Potter, Sizer, and
5 current Chief Reese.

6 I've reached conclusions based upon experience,
7 only a few which I can share because of the time.

8 First, I believe the root cause of the excessive
9 force used by the Portland Police Bureau runs from a
10 systemic breakdown in the management of the Portland
11 Police Bureau. This breakdown has created an inability or
12 unwillingness to discipline Portland police officers for
13 their excessive force, especially when the force results
14 in a death. As a result, in the last 35 years, not a
15 single Portland police officer has been disciplined for
16 the use of excessive force which caused the death of a
17 citizen. 35 years.

18 Here are two brief examples: In 2010, Aaron
19 Campbell, a young African-American, was suffering from an
20 emotional crisis over the death of his brother. Although
21 unarmed and threatening no one, he was repeatedly shot by
22 Portland police officers in the back, first with a
23 less-lethal shotgun, and then with an AR15, which killed
24 him.

25 Another example from 2006 involves James Chasse,

Jr., who was living with mental illness. After the police suddenly confronted and startled him, he was tackled to the pavement by a Portland police officer, beaten by an officer, beaten by a Portland police sergeant, and beaten by a Multnomah County deputy. He suffered at least 26 different fractures of at least 18 different rib bones and a punctured lung for which he died.

Despite the overwhelming evidence supporting termination of the officers in those two cases, no officers were terminated or even given lesser discipline for their use of excessive force.

Timely employee discipline is an integral part of an effective system of employee management. The absence of discipline contributes to a toxic environment, which employees know they can violate workplace rules with no consequences.

The PPB and the City's failure to discipline officers for the use of excessive force has contributed to a dangerous culture within the PPB wherein officers tragically know that they can use excessive force and take the life of someone and get away with it.

Unfortunately, the proposed settlement agreement devotes only a single sentence to the subject of discipline -- one sentence -- which is likely to do little or nothing to address the serious shortcomings in the

failure to appropriately discipline officers. Having not addressed this critical root cause of excessive force within the Bureau, the settlement agreement should be rejected.

I have also looked at the new 2013 use of force policy, which the Bureau has rolled out. My conclusion is that the new policy is no better, and it might even be worse than existing policies have been. This is despite the DOJ having come into town a year prior to that time.

One of the reasons I have reached that conclusion is I attended a training about three weeks ago in which the Portland Police Bureau talked about the new policy and related training. What I took from that PPB is that PPB is still teaching its officers that it is an us-or-them survival situation on the streets. In other words, the overriding warrior mentality, which the PPB has fostered for over the past 35 years, is being promoted by its trainers despite the proposed settlement agreement.

It is also troubling because the PPB's website claims that it has completed almost all the actions necessary for it to take under the settlement agreement, including new force policies and new training.

What I see is that none of this has made a difference at all. Under the agreement, there is no way the DOJ isn't going to approve what the Portland Police

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Bureau has done, which is nothing, with its policy on force or related training.

Related to that, experts will tell you in law enforcement, because if it is not in the policy, officers don't worry about doing it. That's what they are held responsible for. I and other people in this community have repeatedly asked the Bureau to put into effect specific, detailed, concrete, helpful provisions in a force policy that will tell officers what they can do and what they can't do. The Bureau refuses to do it. Again, DOJ isn't going to make them do it. The agreement doesn't require it. And it means they are not going to have to. So in my view, this agreement does nothing to improve the landscape in terms of use of force or the related training in this community.

I would like to reserve some time later today or tomorrow.

THE COURT: That's fine. If there is still someone sitting at the desk -- well, I will make a note of it. Very good.

Thank you, Mr. Steenson.

I saw earlier Mr. Alexander. There you are, sir. Welcome. Come on up.

Mr. Alexander, on behalf of the Urban League. I will ask you to start by spelling your last name.

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MR. ALEXANDER: Yes, sir. My last name is A-L-E-X-A-N-D-E-R.

THE COURT: Welcome.

MR. ALEXANDER: Good afternoon. Thank you for having me, Your Honor. My name is Michael Alexander. I serve as the President and Chief Executive Officer for the Urban League of Portland. I am here to offer testimony on behalf of the League.

Our mission states that we exist to "help empower African-Americans and other Oregonians to achieve equality in education, employment, and economic security." The words "other Oregonians" often refer to communities of color, those impacted by poverty and bias, and those whose behavioral and emotional status renders them vulnerable or at risk.

It is our concern for this last group of residents that has brought many of us here today, but we cannot help but think that the implications of this settlement agreement will have an impact on others in this city on many concerns, including, but not limited to, racial profiling.

I want to start by saying that we commend the Court for granting the Albina Ministerial Alliance Coalition for Justice and Police Reform enhanced amicus status in this matter. Their willingness to have the

1 settlement move forward offers some solace to those of us
2 concerned that the excessive use of force often translates
3 into life-threatening and fatal situations.

4 The settlement agreement recommendations
5 regarding changes to the Portland Police Bureau use of
6 force adopted by City Council includes many elements that
7 we believe will serve to reduce the concerns and the
8 findings identified in the Department of Justice
9 investigation. The proposed settlement agreement is in
10 its truest form a compromise.

11 I took a few moments before I prepared my
12 remarks to look up the definition of "compromise." The
13 result was very interesting. One definition of a
14 compromise was "to listen to two sides in a dispute and
15 devise a compromise acceptable to both." The other
16 definition offered a striking contrast, in my view. It
17 said that the compromise was "to weaken by accepting
18 standards that are lower than what is desired."

19 Is this agreement one that reflects the
20 willingness of all parties and stakeholders to find,
21 establish, and strengthen common ground, or is it a
22 document that essentially incorporates the result of one
23 side pressing to get as much as it can and the other
24 intent on doing as little as it can? It is my
25 organization's hope that the settlement agreement before

1 us is in fact representative of the former and not the
2 latter, but I stand on thin ground in saying that.

3 I want to state publicly that I believe the work
4 product of the past of year is in fact representative of a
5 genuine effort to establish and strengthen common ground.
6 However, I'm very concerned that it has been forged
7 without addressing several issues that many in our
8 community and our city feel a necessity to effect needed
9 changes in the use of force by the Portland public Police
10 Bureau.

11 Our first recommendation is to have this Court
12 extend the amicus status granted to the AMA for it to be
13 empowered to bring any substantial violation of this
14 agreement to the Court's attention. Currently the parties
15 serving in that role are only the Department of Justice,
16 the City of Portland, and the Portland Police Bureau.

17 The AMA was afforded enhanced amicus status in
18 the settlement negotiations and the settlement agreement,
19 and we believe that they should also be considered a party
20 for purposes of monitoring enforcement, because they are a
21 critical voice of many people across this community.

22 Allowing the community a voice through them
23 would help engender trust and pave a broader path for full
24 enforceability and accountability. Simply stated, the
25 Albina Ministerial Alliance should be entitled to the same

1 remedy available to the other parties pursuant to the
2 enforcement section of the agreement.

3 Our next concern is regarding the failure of the
4 settlement to address the need to enhance the authorities
5 of the Independent Police Review Division and the Citizens
6 Review Committee to compel officer testimony. This can
7 only be accomplished through the abandonment of the
8 48-hour rule and a revised standard of review to guide the
9 Citizen Review Committee's analysis of reviews. We
10 believe that advancing these items would demonstrate a
11 more genuine commitment to accountability. Unfortunately,
12 the settlement agreement fails to take these two steps.

13 Clearly occurrences involving the use of force
14 are traumatic for officers and victims alike. However,
15 the need to be assured that all efforts are undertaken as
16 promptly as possible to determine what happened and the
17 circumstances surrounding the incidents are critically
18 important to all parties.

19 The level of trust and responsibility placed in
20 the hands of officers who serve our community dictate that
21 every measure be taken to assure effective and timely
22 pursuit of the facts, whether they serve to exonerate or
23 implicate the officer.

24 We need to move quickly and deliberately to
25 enable the department, and if need be, the courts to

1 assess what is happening.

2 I am not unsympathetic to the belief held by
3 many that interviewing an officer immediately after an
4 incident is not fair to them. Many psychologists affirm
5 that interviews should not be taken at a time when an
6 officer is likely to be suffering from the effects of
7 trauma or fatigue. However, consideration should be given
8 to conducting a brief interview as soon after the incident
9 as possible, which captures the officer's account of what
10 occurred and addresses any issues on which immediate
11 action needs to be taken. This could then be followed by
12 a more formal interview after the prescribed 48-hour
13 period.

14 Our next recommendation is to have the language
15 of the settlement agreement more broadly embedded in the
16 Portland Police Bureau use of force policy. I know that
17 we are here to address the use of excessive force and the
18 engagement of the mentally ill, but this settlement will
19 cast a shadow on other use of force situations as well.

20 In order for the settlement agreement language
21 to improve the use of force, it must be codified in
22 Portland Police Bureau directives. We recommend that this
23 Court instruct the City of Portland and the Portland
24 Police Bureau to adopt all rather than just some of the
25 use of force policy recommendations set out in the

1 settlement agreement. While acknowledging the progress
2 made and policy revisions to date, they do not reflect the
3 full scope of the recommendations of the agreement.

4 Finally, we would like to see greater emphasis
5 placed, not only on monitoring, but on compelling
6 compliance and addressing the failure to do so.

7 The settlement agreement discusses consequences
8 to violating the use of force policies. It states, and I
9 quote: "Objectively unreasonable uses of force shall
10 result in corrective action and/or discipline up to and
11 including termination." That's paragraph 67d.

12 This is a strong provision in the settlement
13 agreement. However, in order for it to be impactful, it
14 must be diligently enforced.

15 As all parties to this settlement move forward
16 in implementing it, we join our community partners in
17 recommending that you provide further guidance on the
18 definition of "substantial compliance" with the agreement.
19 For the guidance on what compliance looks like, it will
20 help to manage the expectation of those in the community,
21 in city government, and within the Police Bureau who are
22 committed to addressing these issues.

23 In closing, I want to say that this agreement
24 can move us forward to a better set of standards, although
25 from the perspective of the Urban League, we would like to

1 see it go further. It is, however, a good starting point
2 and one that we suggest not be rejected. However, where
3 it starts will not nearly be as important as the point to
4 which it evolves.

5 I ask the Court to consider the importance of
6 addressing the concerns that I have raised as a way to
7 remove barriers to greater confidence and to build belief
8 in the settlement agreement going forward.

9 I thank you for the opportunity to speak today.

10 THE COURT: Thank you very much, Mr. Alexander.

11 I would like to hear next from representatives
12 from Portland Copwatch. I think we have three folks here,
13 Mr. Handelman, Ms. Hannon, and Ms. Hellegers, I believe.
14 You may proceed in whatever order you prefer.

15 Then I would like to hear from Ms. Eng,
16 Mr. Pickering, Mr. Troy, Mr. Chasse, and then Shannon
17 Pullen, and then I am going to take a 15-minute lunch
18 break. I think 15 minutes for a lunch break -- I will
19 euphemistically call it a lunch break.

20 Please begin by stating your name and spelling
21 your last.

22 MR. HANDELMAN: Your Honor has our written
23 testimony --

24 THE COURT: And I have read it.

25 MR. HANDELMAN: -- and the attachments.

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1 My name is Dan Handelman.

2 Judge Simon, Portland Copwatch is presenting to
3 you today a focused and abridged version of information we
4 sent as written testimony on January 31.

5 Portland Copwatch is a project of Peace --

6 THE COURT REPORTER: I am sorry, sir. You are
7 going to have to slow down.

8 THE COURT: Let me ask you, Mr. Handelman, are
9 you planning on reading verbatim what you just handed up?

10 MR. HANDELMAN: The oral testimony, yes, sir.

11 THE COURT: I can give a copy to the court
12 reporter, so we will have that.

13 MR. HANDELMAN: I can do that.

14 THE COURT: But I think rather than you read
15 quickly --

16 MR. HANDELMAN: I can slow down, Your Honor.

17 THE COURT: Not only slow down, but I think it
18 might be more useful for you to articulate what you
19 believe are the highlights and important parts. I have
20 read the testimony. It is valuable and good and important
21 testimony, but I think there might be effective ways of
22 presenting it. That said, the time is yours. I will
23 defer to however you wish to present it.

24 MR. HANDELMAN: I appreciate it. I did spend a
25 lot of time preparing this. I am going to try to read it

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1 at a reasonable clip.

2 Portland Copwatch was founded as a project of
3 Peace and Justice Works in 1992 to promote police
4 accountability through citizen action.

5 Our all-volunteer organization works toward a
6 police bureau free of corruption, brutality, and racism.
7 We have been students, teachers, and critics of police
8 policy, practices, and training. I am a founding member
9 of Portland Copwatch, and I currently serve as secretary
10 of the board.

11 I personally have attended almost every publicly
12 held police oversight body meeting since our founding. We
13 were invited participants in the City's 2000 workgroup on
14 the oversight process, the 2006 Racial Profiling
15 Committee, and the 2010 Police Oversight Stakeholders
16 Committee.

17 As we noted in our written testimony, to
18 properly determine whether the agreement is fair,
19 adequate, and reasonable, we need to look at what existed
20 before the Department of Justice investigation began, what
21 the DOJ wrote in their letter of finding, what our group
22 and others asked to be included in that agreement, and
23 what the City has been implementing while the agreement
24 has been awaiting the Court's review.

25 While we recognize the parties to the lawsuit

are asking that the Court enter the agreement into the record as written, we are urging you to either, A, direct the parties to make changes in the agreement before it is finalized; or B, order them, using the provision of the agreement to make changes, which is paragraph 187, to enact a new side agreement to fixing the most troublesome parts. Small changes have already been made to the agreement.

The AMA Coalition's collaborative agreement allows changes to the process for appointing members to the Community Oversight Advisory Board. Changes made to the Independent Police Review Division ordinance allow flexibility in the 180-day investigative timeline laid out as mandatory in the agreement.

THE COURT: Mr. Handelman, may I interrupt? If you don't want to do this, just tell me and I will do it your way. You just mentioned that you want me to order them to make changes to the agreement or to make language changes under paragraph 187. I don't think I have the legal authority to do that. I think my legal authority is to simply approve the agreement or disapprove it. Do you look at it differently, and if so, please give your position.

MR. HANDELMAN: Well, Your Honor has allowed me to approach the bench a couple of times, and I have never

been to law school, Your Honor has appointed an enhanced amicus to this case, which doesn't exist in any other courtroom that I know of, and I think Your Honor can find some creative ways to make this happen.

We also pointed out how even if the agreement is entered into the record, the City is already out of compliance with its terms. And even though some changes may be insignificant, such as changing the name of the Behavioral Health Unit, some are not, such as alleged existence of mental health walk-in and drop-in centers. Because it is impossible for the public to know which aspects will be considered when the Court determines substantial compliance, we are seeking changes to the agreement and guidance from the Court.

The City has in the past made inadequate tweaks to policies and ordinances and told us "let's wait and see how this works." We hope the Court does not fall sway to this delay tactic, and instead will direct the parties to take the steps necessary to fix the Portland Police Bureau and its accountability system. As context, we remind the Court that the DOJ called Portland's oversight system "Byzantine" and "self-defeating." Also, the DOJ itself has stayed silent about whether some language in the agreement and the way the City has been implementing the agreement to date satisfies their concerns.

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Since we have been following these issues closely for 22 years, we feel we are in a unique position to pick out what parts of the agreement will allow the City to keep function with its inadequate policies, which might make things harder for community action over the duration of the agreement. Because of these weaknesses, we will not apply to be on the COAB unless the most egregious problems are fixed.

In our first section of the written testimony on "appealing findings on deadly force in investigations," we noted that people subjected to deadly force or their families should have the right to appeal administrative findings on officer misconduct.

This prohibition is a glaring and obvious way in which the agreement does not remedy the pattern and practice of excessive force against people in a mental health crisis. We find it hard to believe that anyone in the city, much less anyone in the mental health community, believes that it is fair, adequate, or reasonable for the agreement to state in its definition section that such a person has no right to appeal to the Citizen Review Committee.

After Fred Bryant, the father of Keaton Otis, learned that the internal Police Review Board had reviewed the incident in which his son was shot 23 times by

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Portland Police after a traffic stop and found that there was no violation of policy, he requested an appeal. IPR refused. Never mind that city code states that the complainant or involved officer may have the opportunity to appeal the PRB's recommended findings to the CRC.

This code was in part written to remedy a problem identified by IPR after a 12-year-old African-American girl was shot by a PPD bean bag gun and under the previously existing rules would have had no right to appeal because the Bureau opened an investigation before she and her family could file a complaint. But for some reason, the City continues to separate shootings from all other cases. They argue that the person has a remedy through civil litigation. However, that would only result in the City paying out money to the person or their family, not disciplinary action against the officers. Ideally, the agreement would actively affirm the ability of persons to file appeals in deadly force cases, but we ask at least a portion of paragraph 43, indicating that there is no right to appeal those cases be struck from the agreement.

We skip forward now to our sixth item on use of force. In this section we urge that policies clearly limit the amount of force the PPB is allowed to use; that violations have serious consequences; that officers not

1 have special rights when being investigated; and that cops
2 not be left alone to investigate other cops.

3 Because the DOJ investigation found a pattern or
4 practice of excessive force by the Bureau, how the City
5 has chosen to make changes is illustrative of their
6 overall efforts. It seems they are taking the question of
7 whether remedies are adequate to mean do they minimally
8 conform to what the agreement requires?

9 The agreement requires the force policy to
10 include language about using "only the force reasonably
11 necessary" and to "develop the skills to regularly resolve
12 confrontations without resorting to force or using the
13 least amount of force." Yet when the Bureau released its
14 revised force policy on December 13, those words are no
15 longer found in it, even though they were in the existing
16 directive when the DOJ investigation began and in the
17 February 2013 amended version.

18 In revising the policy, the Bureau discusses
19 Graham v. Conner reasonableness legal standard, but
20 removed the reference to needing to meet the City's higher
21 standard. The City reworded the "develop skills over
22 time" language, moving that phrase to its "satisfactory
23 perform" directive while adding a sentence stating the
24 Bureau "requires that members apply effective force when
25 necessary." This could mean that officers will be

1 disciplined for failing to use force, a contrary notion to
2 the idea of reducing PPB violence.

3 So even though the agreement calls for police to
4 de-escalate their use of violence as the resistance from
5 the subject decreases and encourages "disengagement and
6 de-escalation techniques when possible," it seems the
7 Bureau is leaving loopholes for force to be used as it
8 always has been -- with impunity.

9 We have called repeatedly for the City to
10 reinstitute some variation on the continuum of force that
11 once was part of the force directive, at least to make
12 clear the maximum force that can be used against certain
13 kinds of threats. Both the community and the police would
14 benefit from the clarity such a set of guidelines provide.

15 The agreement's description of a discipline
16 guide reasonably calls for discipline to be "predictable
17 and consistent" but doesn't call for terminating officers
18 for egregious rights violations.

19 Meanwhile, the City has chosen to retain many
20 provisions in the Portland Police Association contract
21 which hamper accountability, and which are public policy
22 issues of fair wages, safety, or benefits. For example,
23 the 48-hour rule allowing officers two days before being
24 compelled to testify about alleged misconduct was left
25 untouched in the recent negotiations conducted under the

1 impending agreement.

2 We also note the agreement does not call for
3 strong changes to the policy on medical attention to
4 people injured by police.

5 Furthermore, while the agreement calls for all
6 use of force complaints to be investigated, it allows
7 dismissal if IPR finds "clear and convincing evidence" to
8 drop the case. There is no provision for the complainant
9 to challenge this evidence. Plus, the investigation into
10 use of force begins on the scene, when a supervisor is to
11 show up, even though that supervisor is usually a sergeant
12 in the same collective bargaining unit as the officer. We
13 suggest the City be directed to send a civilian
14 investigator to the scene of use of force as well, or
15 instead.

16 Our second chapter on Taser use notes the
17 agreement leaves room for improper and excessive use of
18 Tasers, while the City's recent changes have created even
19 more loopholes.

20 The agreement calls for the Bureau to rewrite
21 its Taser policy, but allows a continuation in exceptions
22 to the Taser directive, including allowing: Tasers being
23 used for three or more cycles, even though it notes such
24 use is a "serious use of force"; tasing handcuffed
25 subjects; using multiple Tasers on one person

1 simultaneously; and using Tasers on people in mental
2 health crisis.

3 When the Bureau revised its policy to meet the
4 new standards in February 2013, it reflected many of these
5 loopholes. The Bureau's December 2013 version, based on
6 closed-door discussions with the PPA, among other things,
7 modified a prohibition on the use of Tasers to threaten or
8 coerce. The new directive allows threats or coercion "to
9 manage a potential or actual physical confrontation."

10 The Ninth Circuit Court noted Tasers can cause
11 substantial pain, so should be restricted for use only
12 when an actual threat to safety exists. Neither the DOJ
13 agreement nor the Bureau's watered-down version seem to be
14 in line with that ruling. The DOJ letter of findings
15 noted that Tasers might even cause death and called upon
16 the Bureau to reconcile its policy with the Ninth Circuit
17 findings.

18 Even the oversight mechanism built into the
19 agreement calls for consideration of exception to any
20 rules. The Compliance Officer/Community Liaison is asked
21 to ensure officers "do not attempt to use Tasers to
22 achieve pain compliance against subjects who are unable to
23 respond rationally, unless doing so is reasonably
24 calculated to prevent the higher level of force."

25 We should add here that Copwatch, the CRC and

the CPRC, which includes officers as voting members, have all recommended the Bureau collect data on "laser dot only" use of Tasers, but that has not happened and is not reflected in the agreement.

The agreement needs to be clearer and more firm to limit Taser use and be consistent with case law, and the City needs to close the loopholes which seem designed to let officers continue their practice of unchecked Taser use.

THE COURT: Thank you, Mr. Handelman.

I will now invite Ms. Hannon.

MS. HANNON: My name is Regina Hannon. H-A-N-N-O-N. I have been with Portland Copwatch for about ten years and formerly served on the PJW board. I also frequently observe CRC meetings.

In Section 7, we focus on mental health problems of the agreement, which are a good start, but do not go far enough. For example, the Bureau's new Behavioral Health Unit has a connected advisory board. While the Board has access to the Bureau's training materials, they decided not to allow the public at any meeting. The ability for the community, particularly people with mental health experience, to weigh in on policies is curtailed by how the BHU has been implemented.

Further, the Mobile Crisis Unit only requires

one car in every precinct. Since each precinct covers roughly one-third of the City and the officers work only one of three shifts, this is inadequate to provide professional help in situations where a uniform might escalate tensions. Worse, the City uses this unit to give a second chance to officers involved in controversial events. An early officer in the MCU was Chris Burley, who was involved in shooting of Keaton Otis just two years before. One witness said Burley punched Otis in the face before bullets started flying. Recently, Officer Bret Burton, one of the three officers who beat James Chasse to death in 2006, was assigned to the MCU. A person with mental health issues who knows these names might not feel safe seeing their nametags.

The agreement is wise to affirm a hybrid Crisis Intervention Team model, which keeps training all officers in de-escalation and mental health, adding skilled members in an Enhanced CIT Team. The existence of such team may lead non-specialized officers to think they don't have to use their own de-escalation training to resolve situations. In 2001, José Majía was shot when a second set of officers came to the mental health hospital he was in, after the first set, which included a CIT officer, went off duty.

An incident documented in the last PRB report

resulted in sustained findings for unprofessional conduct. The officer made taunting comments to a person with mental health issues escalating into a physical fight. This should have never happened, since the officer had received CIT training and the DOJ had sued the City.

The agreement wisely bars, from ECIT, officers who are found out of policy for force or other mistreatment of people with mental illness. However, few officers are ever disciplined for such action. Two officers involved in Chasse's death had their discipline overturned for failing to bring him into the hospital after tasering him, but not for use of force. The prohibition should be broadened to include other kinds of misconduct, cumulative complaints, and insufficient evidence findings.

As Dan noted, the agreement calls for drop-off centers to be established by mid-2013. No such center has materialized, so the agreement needs to be modified before the DOJ proceeds.

Please direct the City to open BHU advisory meetings, ensure all officers rely on crisis training, and think strategically about who should be assigned.

Section 5 of our testimony is about allowing community members to attend PRB -- Police Review Board -- hearings as well as clarifying the Board's ability to

require more investigation.

Five to seven members, PRBs review "performance" cases or force cases. In either scenario, Bureau employees make up a majority.

In its letter of findings, the DOJ wrote, "Curiously, a complaining civilian is not permitted to attend PPB's presentation." Yet the agreement does not allow the complainant to meet the people deciding whether the officer was out of policy, even though they may appeal the findings. CRC appeal hearings are open to the public. The PRB and CRC processes should be more integrated. A step forward might be allowing the media into the PRB hearings with limits on reporting based on privacy laws.

Also, PRB hearings are considered confidential. The agreement attempts to build trust by having CRC members rotate onto the PRB. However, the veil of confidentiality implies that they will not be able to talk, even generally, about their experience.

Meanwhile, the agreement gives PRB and CRC authority to ask Internal Affairs or IPR to conduct more investigation on a misconduct claim. But it requires investigators "conduct the additional investigation in ten days or provide a written statement why more time is needed." It does not require the investigation be completed, nor what PRB or CRC can do if the investigating

body refuses the request. The Bureau refused to do more investigation in three CRC cases in the past two years, and this power needs to be firm and clear.

In Section 3 on IPR, we note the process for investigating misconduct complaints relies heavily on the police, and that timeline must allow for the process to be completed.

The agreement calls for the City to "enable meaningful independent investigations by IPR." In January, Council voted for a process where the Bureau sends a representative to IPR interviews to compel the officers to testify. The IPR director stated in October that that then-existing system in which an IA employee directed the suspect officer to answer questions, was "crazy." The new system is not terribly different, and IPR is still dependent on the Bureau.

Although empowered to, IPR never conducted a single independent investigation until last year, and it did not involve any community members.

In pushing the January ordinance, IPR backtracked from its position that, as part of the City, it could compel officer testimony. We keep suggesting a charter change granting power to compel testimony to an independent police oversight agency.

What the community has been requesting for over

20 years is an agency that can conduct investigations without the involvement of Bureau employees, plus the IPR should investigate incidents, including shootings and other high-profile issues, not only vaguely defined cases IPR decides to pursue.

The agreement instructs that "the City shall complete all investigations of officer misconduct within 180 days." This means that an investigation has to be terminated if IA or IPR does not finish on time, so an officer under suspicion of misconduct could walk free. The City modified its language, which now only requires notification be sent to the police commissioner and auditor if the time is exceeded. Here, we support the City not going as far as the agreement requires, but recommend it be modified to provide for this change.

In Section 4 about CRC, we call to make their standard for evaluating misconduct findings less deferential, to give the volunteer members time to hold appeal hearings, and to set their quorum at six.

CRC can recommend the Bureau change a finding if it is "not supported by the evidence." The IPR ordinance and the agreement define "supported by the evidence" as using a "reasonable person standard." CRC has been repeatedly frustrated by this deferential standard of review. In 2008, expert Eileen Luna Firebaugh said the

"reasonable person" standard is too complicated and CRC should base recommendations on a preponderance of the evidence.

The City argues that replacing the standard will change CRC from an appeals body into a fact-finding body, and this is faulty logic. In the first place, the lower court in this case is either an officer's supervisor or the PRB reviewing the IA investigation. In neither case does the complainant speak directly to the fact-finder. And secondly, even when CRC recommends changing a finding, the Bureau can use a conference committee to change their minds. If that is unsuccessful, the case goes to Council for final disposition. So, Council is the fact-finder in this analogy, not CRC.

We urge that either the definition be changed to preponderance or that paragraph 61 be deleted. The agreement also creates an unrealistic 21-day timeline for the all volunteer group to hold hearings. CRC has held monthly hearings since their inception. If an appeal were filed the day after their meeting, CRC would have to assign an Appeals Process Advisor, read the case file, and hold the hearing, all before the next meeting. The current ordinance calls for a case file review for CRC to determine if they have enough evidence or information to proceed, which is a valuable step only added two years

ago. CRC's timeline for holding most hearings is 63 days or less. Commissioner Novick says Council agrees the 21-day timeline is too short, but the DOJ is refusing to budge on this point.

Additionally, the agreement sets CRC's 21-day timeline within the six months to resolve complaints. Since intake and investigation are done by City-paid employees, it seems unreasonable to include volunteers in this timeline. We question whether any community member has ever called for CRC hearings to happen within three weeks. Most appellants leave the CRC feeling the process was fair, even though the outcome might not be what they wanted. CRC's timeline should be extended to 63 days and appeals should not be included in the overall timeline.

Finally, the agreement calls for the CRC to expand to eleven members, which Council adopted, along with a controversial provision setting a quorum to five members. This could allow a small faction to make decisions without the consent of the majority, creating confusion. We suggest the City make the quorum six and allow CRC to delegate authority to smaller panels by a two-thirds vote. We urge the Court to direct changes be made to fix this before the predictable problems emerge.

Thank you.

THE COURT: Thank you very much, Ms. Hannon.

Ms. Hellegers. Am I pronouncing it correctly?

MS. HELLEGERS: H-E-L-L-E-G-E-R-S.

So, Judge Simon and members of the community, my name is Desiree Hellegers. I have been a part of Peace and Justice Works, Copwatch, for about 15 years. I am currently a member of the Board. I work as an associate professor of English at Washington State University in Vancouver, where I co-founded the Center for Social and Environmental Justice.

Regarding Section 8, we believe training should include input from all of the community; that changes to training should look at past and present trends; and that trainers should be chosen carefully.

We support the AMA Coalition's concerns that training of officers should include members of the community, from the planning through implementation. Bureau officials seem happy with the way that institutional racism training was created, involving members of the CPRC in the design and follow-through. That process can prove a template for the future.

The agreement calls for the Bureau to incorporate changes based on "concerns reflected in court decisions," which should include both higher court rulings and results of civil lawsuits against the City. Also, when looking at "law enforcement trends" to improve

training, the agreement should include Portland Police history to avoid problematic tactics. For example, the choke hold is included as a type of lethal force, even though the Bureau banned those holds decades ago.

The exclusion criteria for trainers, like the ones for the CIT Team, rely too much on sustained force complaints, since, as Regina noted, few force complaints are ever sustained. The agreement also calls only to disqualify officers if a civil judgment has been rendered due to use of force. The agreement should also exclude officers for repeated complaints of excessive force and lawsuits that end in settlements.

Turning to Section 9 on tracking police contacts, the agreement calls for collection of demographic data about some police encounters, but is not clear which encounters will be tracked or that changes will be made based on the data.

In its Letter of Findings, the DOJ recommended the Bureau track every citizen contact, including ones that expand from "mere conversation." The agreement makes a vague requirement for the Bureau to "document appropriate demographic data regarding the subjects of police encounters" without defining what incidents to cover. The same paragraph calls for the City to "report on its efforts to enhance data collection no later than

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December 31, 2013," a deadline that has passed and needs to be changed before the agreement moves forward.

We support this data collection being done to "contribute to CPRC's analysis of community concerns regarding discriminatory policing." We hope deadlines will be set so publication of such data will not be delayed for years, as remains the case with the 2011 and 2012 data, especially since CPRC is required to report to the COAB on the progress of the City's racial profiling plan.

A December Portland Tribune story about a new "community policing" program quotes an officer who requested three young people get out of a car and submit to a "stop and pat-down" to be sure the men were not armed. It seems the Bureau is minimally instituting the agreement while simultaneously making a mockery of it. City staff have indicated they are not tracking who is being stopped and patted down. We hope the Court explains to the City that policies meant to improve community-police relations with people experiencing mental illness should be implemented across the board, unless the City wants to end up back in court with new pattern and practice findings about race.

The Service Coordination Team, one program that has disproportionately targeted African-Americans, is

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embedded into City policy by the agreement. In 2008, statistics showed 52 percent of people subject to this program were African-American in a city that is six percent black. While we applaud getting people into treatment rather than jail, we question whether such social service triage should be done by police rather than appropriate agencies.

We also noted CIT data collection is to include name, age, gender, and address, but not race. The COCL's semi-annual assessments are to include demographic data connected to use of force, force complaints, and sustained force complaints, which the Bureau has published intermittently since last year. The Bureau's data on use of force for last summer shows increases in both use of force against people with mental illness and the number of multiple Taser implementations. It should be stressed that in addition to releasing data, the agreement calls for the PPB to use less force and fewer Taser strikes.

In Section 10, we note the agreement, as already implemented, undermines its stated principles of transparency. The City has been putting in place aspects of the agreement prior to the effective date. While some parts are only required after the effective date, what the City has and has not done reveals its priorities for the future.

The agreement calls for the Bureau to "ensure transparency and public access to information related to PPB decision making." Dan outlined how the PPB made changes to its Taser and force directives without community input.

Regina noted that Behavioral Health Unit Advisory Board's meetings are not public, in contrast to the agreement-generated TAC and COAB, whose meetings by definition are open.

Regina also noted that the City only implemented some proposed changes to the CPC and PRB, but not their power to order more investigation. Sections requiring sharing more with complainants by putting information on the City's website, sharing documentation about complaints, and tracking cases from start to finish have also not been implemented, to our knowledge.

Because there are no public reports about the Employee Information System, we also do not know whether that system has been used to identify at-risk employees or whether the new trigger of such uses of force in one month refers to a calendar month or a 30-day period. We support the AMA Coalition's suggestion that the new criterion should over a 90-day period.

The agreement is not clear about whether all required reports will be public; for example, the Bureau

Inspector's reports to the TAC, the COCL's outcome assessments, and the Chief's effectiveness assessment for new policies.

It is possible that hiring the COCL and appointing the COAB could shed light on some of these issues, but it seems in the spirit of the agreement that what has already been done to remedy excessive force used against some people with mental illness should be made clearer. What is really needed is clarity and direction from the Court on what the City is expected to do. The Bureau's self-published implementation checklist does not include documentation or verification of its claims. As much information possible should be shared with the public, erring on the side of too much information rather than too little.

Section 11 is our conclusion, detailing how the Court should make clear what the terms of the agreement mean so that determining substantial compliance can be done objectively.

The most important part of any legal contract, especially one affecting an entire government entity, is how it enforced. We've noted the City has already strayed from the terms of the agreement by:

Failing to create walk-in/drop-in centers for people with mental illness.

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Failing to establish a process for collecting demographic data on police encounters.

Revising Bureau policies without doubling back to the community with a new draft.

Changing the names of the BHU and MCU, which the agreement calls the ABHU and the MCPT.

Declaring the 180-day timeline for investigations "aspirational" instead of mandatory.

And agreeing to changes to the procedure to pick the Community Oversight Advisory Board.

If the City and the DOJ continue to decide which items are mandatory and which are guidelines, it leaves the community not knowing what to expect from the process.

The City will soon hire a COCL, who will have tremendous responsibilities to synthesize data, but no power before the Court when recommending changes to the agreement. It is not clear whether the COCL will be able to address the Court if his or her reports are used to evaluate compliance. We hope the Court will lay out expectations on hearing from the COCL directly.

We welcome the data on lawsuit payouts being included in the COCL's semi-annual reviews, but urge that the term "settlement" be replaced with "settlement, judgment, and jury award." After the Chasse settlement in 2010, few payouts have gone to Council, likely because

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they are being entered as judgments and are thus not subject to Council review.

It is commendable to have the police present their annual report publicly, but civil rights organizations must be involved to augment claims they make about force, bias-free policing, and people's rights and responsibilities. Ideally, police would be interested in ensuring people knowing their rights, but the reality is they are trained to circumvent their rights to solve crimes and gather information. This is illustrated in that Portland Tribune "stop and pat-down" article, in which the officers berate "white hipsters who tell black guys they don't have to talk to the cops."

Our concerns about questionable personnel decisions made by the Bureau, such as the hiring of Officers Burley and Burton in the MCU, are being repeated elsewhere. The City hired a controversial person previously involved in state mental health work to assist the Bureau's compliance coordinator. The Mayor replaced his former liaison to the Police Bureau, a community activist with years of experience, with an active-duty police officer. We hope the process and outcome of hiring the COCL and putting the COAB into place will have more thoughtful results.

While our comments are quite detailed, they by

no means exhaust the issues the agreement should address to improve the way the Portland Police interact with people in mental health crises.

Our organization has a long history of following police conduct and suggesting ways to improve police behavior and oversight. Our presence on the COAB would greatly benefit the implementation of this agreement. However, as Dan said, if the COAB is going to be relegated to looking at the agreement as the maximum expected change -- a ceiling rather than a floor -- and if its job will be limited to interpreting the agreement as written, our organization cannot in good conscience even apply to participate.

That's why we're asking the Court to lay out expectations for substantial compliance, directing the parties to negotiate a side agreement under paragraph 187 to fix the agreement's problematic parts and give guidance to make true steps toward a Bureau free from corruption, brutality, and racism.

Thank you.

THE COURT: Thank you. Let me have Ms. Eng. You're both welcome to come up. It doesn't matter to me which one goes first, so you can decide.

After that, we will hear from Mr. Pickering, Mr. Troy, Mr. Chasse, Ms. Pullen, and then we will take a

break. I will have a question for you all at the time we take a break in terms of future scheduling for today and tomorrow.

Let me invite either Mary Eng or Anne Eng to step forward. Which one is stepping forward first?

MS. ANNE ENG: Anne Eng. E-N-G.

Your Honor, it is a pleasure to be here.

THE COURT: Please spell your last name.

MS. ANNE ENG: Anne Eng. A-N-N-E, E-N-G.

First off, I am a registered nurse. I have been a nurse for almost 50 years, and I have seen just about every kind of nursing there is. Currently I am doing psychiatric nursing up at the hill, at the veterans hospital, and I have worked for the VA for about 15 years.

I don't know why that's important, because basically what I want to do is tell you the story of Benjamin Pickering. First off, my thoughts on the reasonableness and adequacy and fairness of the DOJ's proposal reflect my concern for the health and well-being of all the populace of our country as well as the police.

My response right off the bat was that, in taking \$26 million to create more bureaucracy as a watchdog over the dysfunction we are talking about is like hitting our heads against a brick wall over and over expecting a different result each time. We heard that

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earlier.

We have a common enemy. That enemy is trauma. Its faces are neglect, poverty, addictions, unemployment, no employment, inadequate education. I have seen in print that we spend 60 percent of our national budget on war efforts and 10 percent on education.

Absence of living wages, racial profiling, which is a form of scapegoating, workforce bullying, disturbed interpersonal relations, child and elder abuse, impoverished self-images, anger, anxiety, and some of these manifestations are called mental illness. Trauma is at the base of all of these, and every one of us in this room has been impacted by trauma in some way of one of these sorts. Trauma becomes generational. We pass it on. When we see our police officers acting out of line, it might be that they were abused children themselves once in the past.

So we have to address the problem of trauma and the dysfunction that we find in our world differently. It has to be done providing a sanctuary for all human beings.

Anyway, what I really wanted to do is explain who Benjamin Pickering is. Benjamin Pickering came to live in my home. We found him on the streets. He had been -- well, let me start. Ben has traumatic brain injury. He is not mentally ill.

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In late April of 2013, he came to Portland from a coastal Washington town after having had his scalp split open by a criminal type, who also threatened to kill Ben if he pressed charges.

But this was not his first TBI. On Easter morning of 1995, when he was ten years old, he was crushed by a two-ton log that swept over him as he played on the beach with his siblings and friends. With blood gushing from his head and vomiting blood, he was life-flighted to our own Emanuel Hospital here in Portland, where he was not expected to make it.

His skull was crushed from the back all the way up between his eyes, and his nose was crushed. He was blinded in his left eye. Ben lived. Because of his TBI, he needed tutors. He wasn't slow, but things were more difficult for him. Breathing caused him to have severe headaches. He had a very atactic gait because of injured legs. He has had to work hard to correct his sway and gait, which sometimes gives the impression that he is on something.

Ben was raised in a very rural community, and the most supportive influences were from the friendly church people who always wanted to shake the "miracle kid's hand." He learned to shake hands with everybody. To this day, he can't stop wanting to greet everybody that

1 way.

2 Because of his own trauma, he is not traumatic.
3 He is a very peaceful, loving, beautiful person, and, of
4 course, he loves to shake hands. This sometimes is
5 getting him into trouble in our city, because it is
6 considered touching people that don't want to be touched.
7 But he does it with love and respect.

8 In his hometown with one main street, jaywalking
9 was not an issue. It is here in Portland. He found that
10 out with many encounters with the police. Coming to the
11 big city, jaywalking was not only dangerous, but in a
12 necessity to learn how to cross with the signals.

13 Within days of arriving in Portland, Ben
14 Pickering was robbed of all of his money at knifepoint by
15 some people who -- because he is quite trusting. They
16 stole his ID except for one piece later that surfaced --

17 THE COURT: May I interrupt briefly. The time
18 is up, and we do want to hear from a number of people. If
19 I could ask you to wrap up your comments in a sentence or
20 two, please.

21 MS. ANNE ENG: Okay. I can do that.

22 THE COURT: Thank you.

23 MS. ANNE ENG: I guess if I part you with
24 anything: Don't be traumatic in your lives. All those
25 things that I listed as forms of trauma, they are what

1 makes our culture sick and hateful.

2 THE COURT: Thank you very much, Ms. Eng.

3 In order to maintain the decorum of the
4 courtroom, I must ask people refrain from comment. You
5 all know that anyone from the public who wants to comment
6 is going to be invited to comment. So may I please ask no
7 applause, no boos, none of that, please. Thank you very
8 much.

9 Ms. Eng.

10 MS. MARY ENG: Thank you, Your Honor. If it
11 would please Your Honor, I would provide some evidence.

12 THE COURT: You may. But you also have to state
13 your full name and spell your last.

14 MS. MARY ENG: Hi. My name is Mary Rose Lenore
15 Eng. The last name is E-N-G.

16 I'll just summarize the documents I am
17 providing. I am providing the Chinook Observer 1995 story
18 by Stan Thompson which covers the head injury, which I
19 think is just an exciting area of medical research,
20 because even with the NFL, there has been some obstruction
21 and talk about head injury, what the effects are. So we
22 have got a lot of discussion going on right now.

23 I have got a summary of what was my script. I
24 don't know if I can be as adherent as Copwatch and stick
25 to it.

1 Then I have a letter that I helped -- Kenneth
2 Walker was involved in all the shenanigans with sort of --
3 whatever they do to these police brutality victims with
4 the DA and the defenders. But Ben just wrote his story,
5 and I told him: Well, it seems like your care dog is on
6 trial, because he was talking about the loss of his care
7 dog and how really none of this would have happened if he
8 hadn't gone on the run and turned in Brewski up in
9 Washington state.

10 So this other thing is a comment Ben Pickering
11 wrote, and I typed it up. I thought in a way --

12 Ben, do you mind if I read it?

13 It says: Support to everybody's testimony. It
14 is very upsetting to hear these stories. Sorry about
15 people's losses. But to gain and get everything, sticking
16 together, everybody being forward of the truth. People
17 need to know. Your testimony needs to be heard. Just
18 that little bit. You guys are all heroes for being freely
19 about the testimonies. It can't be put aside.

20 No one can get away with murder and beating
21 people. I, Benjamin Harvey Pickering, 100 percent believe
22 that what happened to me with the cops beating me and
23 other incidents where I was robbed, and they didn't even
24 care to write a statement, like an officer should have, as
25 per ADA Title II. I came to Portland for safety, not to

1 be robbed, beaten, and drugged.

2 The police didn't take a crime report when I was
3 held up for my money. We have people who are supposed to
4 keep us safe. Why does Government pay for those who beat
5 and kill, when the law is supposed to protect and serve?
6 Is that what we pay taxes for? Is it safe for evildoers
7 to get away with that, knowing that their conscience is
8 getting away with it?

9 But you think in time it catches up to those who
10 are wrong. It is like when there is a crime, a killing
11 and murderer out there, the FBI tries to catch them. You
12 do the crime; you pay the time. I don't care if you are a
13 cop or a human being -- if it is a crime. A crime is a
14 crime, either petty or service. The facts are the facts,
15 and I think the cops need to do some time too.

16 So can I write the Government the truth? Is
17 there a special force to arrest the cops who abuse and
18 kill innocent people? Can we pay our taxes, or our
19 Secret Service to arrest a human being, to make an arrest
20 on cops who kill innocent people and beat people for no
21 reason?

22 I said to City Council, "Blackness is not a
23 mental illness." I think "mental illness" is known as the
24 code word for the "new Jim Crow."

25 I can't leave the stand without mentioning

1 MKUltra and Tuskegee. We have a gruesome, dreadful
2 history of violent abuses under what would be considered
3 nowadays medical torture, as the United Nations repertoire
4 on torture would designate, this notion that you can go
5 into any community and start force drugging people.

6 With an officer participating in a quasi-medical
7 role, there is a re-traumatization happening with people
8 who have already been beaten up by a cop. And nice guy
9 Silverman may walk in with Daphne Brooks and seem like he
10 is a good person, but when he is jumping the gun and
11 making a presumption that he knows the correct medical
12 treatment for that person, that's a violation of autonomy,
13 consent, religious ethics at times, and those are the
14 things we should be considering.

15 One other thing I was looking at -- okay, say
16 you put forward an IPR, and you have got an investigation
17 going, then meanwhile you have Behavioral Health Unit
18 stalking you at your home, you are getting re-traumatized,
19 because you have unassessed needs for an adequate
20 investigation, a face-to-face meeting with your
21 perpetrator, and some resolution.

22 You are being retaliated against. Your witness'
23 testimony is being tampered with, and the BHU serves as a
24 witness tampering agency, which I don't think those dots
25 are being crossed there when we look at how the BHU offers

1 a lot of trauma to the victims of police brutality.

2 I think the cops aren't having their needs for
3 trauma assessed as well and tons of compassion for that.

4 The collusion of the DA and the public
5 defenders. Ben's public defender was so bad that I had to
6 go straight to the DA as Ben's advocate, and the DA
7 appeared to have more sympathy.

8 His public defender would not admit that the
9 police brutality occurred, and I think that's where the
10 DOJ agreement does not go far enough.

11 All right. Thank you so much.

12 THE COURT: Thank you very much, Ms. Eng.

13 Mr. Pickering, I did review the videotape you
14 submitted, and I found it very informative. Thank you.

15 MR. PICKERING: I am Benjamin Pickering. My
16 visit here coming to Portland and getting away from my
17 attacker until things had settled -- until they came up
18 with a solution in court. I was supposed to testify
19 against the guy that nearly tried to take my life, a
20 murderer.

21 Anyway, I came up here to get away from the
22 trauma to the head, which I took several staples to the
23 head, and I was gushing out blood at 2:00 in the morning
24 from my electric guitar to the head. And I'm running in
25 the middle of the street, and there is nobody. It is a

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1 ghost town, because there is nobody around. I'm
2 screaming, fearing my life. The ambulance pulled over --
3 someone pulled over and called an ambulance, and I barely
4 made it with losing too much blood to my head and barely
5 lived.

6 I came here to try to get away from my attacker,
7 and the doctor gave me six months to relax and breathe
8 and -- like relax and take it easy for six months. Well,
9 I came here to find out that I had a home lined up, and it
10 fell through to where -- I had all these things/incidents
11 happening, where I had been held up at knifepoint and my
12 money had been took, beat up.

13 Someone was trying to be sexual with me to where
14 I was walking in the middle of the night. The first
15 incident with the cops, they had approached me. They
16 didn't come up to me and ask me if anything was wrong,
17 what's going on, in the middle of the night. I'm scared.
18 I don't know Portland. I don't have long distance phone
19 calls. I have no money in my pocket.

20 I had -- it was hot, so I took off my shirt.
21 And the bottom shirt came out with it, so I put my other
22 shirt on. As I'm walking to just get some water from a
23 bar, because it was the nearest place for hydration, and I
24 go in there, and I'm telling the lady what's going on, to
25 someone grabbing my hand. I turned around to a cop, which

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1 I have no priors, and I was not wanted -- to turn around,
2 and they pulled me forward like that, and there is a metal
3 chair.

4 It barely took my right eye out. I finally got
5 prescription glasses so I can see. But it almost took my
6 right eye out, if I didn't move this way. All four of
7 them grabbed me and put me on the ground and grabbed my
8 head and they are like, "You can take it. You pussy. You
9 can take it."

10 And I said, "I have been hit in the head. One
11 wrong way, and I could die."

12 Being traumatized like that -- I don't care.
13 Justice should be served. I don't want to talk right now.
14 Sorry about whatever.

15 THE COURT: Okay. Thank you very much,
16 Mr. Pickering. I appreciate your comments and appreciate
17 you being here, sir.

(Section 4, Court Reporter Jill Erwin.)

THE COURT: Let me now invite -- is Jamie Troy here from Urban Review Committee? I'll invite Mr. Troy, followed by Mark Chasse, followed by Shannon Pullen, and then we'll take a break.

Please do spell your last name, sir.

MR. TROY: Good afternoon, Judge. Jamie Troy, T-R-O-Y.

Judge, I'm here serving as chair of the Citizen Review Committee. The Citizen Review Committee is currently nine members that will soon expand to 11 members. We're a volunteer group, tasked by City Council. We serve three-year terms, and we're here to assist in the citizen oversight of the Portland Police Bureau.

There -- for the members of the public, there's an application and interview process in order to become qualified for the position. There's a background check, which is pretty thorough. There's orientation and training which takes hours. We do sit-alongs at 9-1-1. We do ride-alongs with Portland Police Bureau. We attend various trainings and ongoing training for -- for instance, for the Police Review Board. There's ongoing trainings right now that we're attending.

Judge, we're tasked with gathering community concerns, making policy recommendations for the Bureau and

to the Independent Police Review Division, and something I'm here to talk about today is another primary function of the group, which is to hear appeals on whether or not a Portland Police Bureau member violated Bureau policy.

The Court likely knows, but the public may not know this. The CRC doesn't have any input into police decisions, but we can make recommendations as to whether or not we believe a Bureau member violated policy at -- in the context of an appeal hearing.

So we meet as a group at a minimum of once per month, and this is a public meeting. We typically schedule our appeals to coincide with those meetings.

Outside of those meetings we have workgroup meetings, which are subgroup meetings, which meet on various different policy issues. We hold outreach forums that go out into the community to hear community concerns. It's a fairly intense process and it's not a volunteer commitment that should be taken lightly. It tends to be a more heavily scheduled process than folks realize, though. The City does a decent job of trying to tell you how much work it's going to be. I think it's difficult until you're there to actually understand that.

You know, to that end, Judge, there was a recent recruitment process. We scheduled two new members to be on our group. One was an African-American man. One was a

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woman. Something we didn't have a lot of diversity within our committee, and so that was great to bring those folks on and those different perspectives. Both of those have resigned from the committee after a matter of months, because, in primary terms, it was too onerous a time commitment for them.

I think that's something that the City and Your Honor should keep in mind in thinking about the requests we are making today relating to the settlement agreement before you.

Judge, I've written in my comments there's really two goals for my testimony today, and those are the two issues we're taking on. I would like to say before that that I think by and large the settlement agreement does a lot of good things. We appreciate many provisions in the settlement agreement, which incorporate, for instance, our membership into Police Review Board decision-making process, and I've had good discussions with U.S. Attorney Marshall and Ms. Brown, Ms. Osoinach, Mr. Woboril about all of these issues, and I appreciate their time and commitment to the process.

But I respectfully disagree with two points. One is the standard of review.

Judge, the standard of review is articulated in the settlement agreement at paragraph 61. We are making a

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simple request. That is that we simply redact or take out the last two sentences of that paragraph.

In doing that, Judge, we would simply relate back the standard of review to the standard of review which is written into the city ordinance. Currently the standard of review is a reasonable person standard. It's a deferential standard. Reasonable people can disagree about whether or not that's the best standard to use.

But, Judge, we would like that debate to go forward. We would like the City, CRC members, and the public to be able to reconsider whether or not that is the most appropriate standard of review and the way the definition section, paragraph 61, is currently stated, the end result is locking us into a standard of review which does not need to be spelled out in such detail in the settlement agreement, and preventing the City and the public and CRC members from revisiting whether or not -- and debating whether or not that standard of review should be changed.

We can keep the standard of review as it is, refer it back to City ordinance, but make the ordinance controlling and not capture it, trap it, keep it in place for five years, seven years, however long Your Honor believes is appropriate, and we are requesting that that occur today or when the decision is made.

Beyond that, Judge, our concern is with the appeal process timeline. The parties to the settlement agreement have defined an investigation to include our function within the system, which is an appeal.

And I understand why they did that, Judge. The CRC makes recommendations. And if the recommendation is to challenge the Bureau and the Bureau accepts that, then it needs to go further in the disciplinary process. So, conceptually, I understand how we got there; but, practically speaking, it's not reasonable from the Committee's perspective to shorten a timeline of what takes approximately 60 days currently and shrink that down into 21 days, and I'll just spend a few moments -- never believe an attorney when they say a few moments -- talking about the current setup and how it works, so Your Honor and perhaps members of the public can better understand that.

Currently, when the appeal gets to the CRC, we're notified of that by the Independent Police Review Division and we all make appointments to drive downtown and go into either the IPR office or the Internal Affairs office, take the file material and spend time reviewing it.

The last time I did this, Judge, it took me approximately six hours. So it is not a simple review,

and it's a goal of IPR to have diversity within the committee. Some of that diversity is to make sure we have some retired folks and some working folks. It's very difficult for someone who holds a full-time job, doing this on a volunteer basis, to make the time commitment necessary to thoroughly review the file material.

I personally don't believe that I can conduct an appeal and make an informed decision, unless I take that responsibility and the obligation seriously, and I do. Other members of the committee share that. But it is not a quick process, and it's difficult to conduct that between 9:00 to 5:00.

We need to come down and review those files. We then ask questions to clarify investigation jargon lingo, and then we conduct what we call a case file review. It's sort of a pre appeal hearing. We're there to talk about the investigation that was done, to ask questions of the investigator to determine if we believe all the information is there necessary to do an appeal. And if we have additional investigation that we're requesting, we ask it at the case file review.

There's sort of a twofold purpose in that. Number one, it's to make sure it's a seamless process, so we're not having an appellant come for an appeal hearing, thinking they're going to have a decision at the end of

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the day, only to have the committee recommend at the appeal to have additional investigation be conducted, creating sort of a false start for the appellant to their appeal process.

So it's a newer process. I think it was implemented in 2010 or '11, and I think it works pretty well. We follow that by an appeal hearing. That's a member -- that's a full panel hearing. The CRC members are responsible for drafting what we call a case summary. This is explaining in detail the controversy before the Committee, hopefully in a neutral manner. Previously that was done by IPR. There was some concern that they wanted a more neutral source, and so that task was delegated to CRC members. That requires two members of my Committee to go down to the file again, to review it in detail, and to draft that case file summary. And then it goes through a vetting process before we conduct the appeal.

We've developed some help for appellants to make sure that they are more able to articulately and competently present their concerns to the Committee. We've created a position called an APA or an Appeals Process Advisor. This is someone who has access to the case file, who can meet with the appellant, who can help them prepare their appeal, to put it most poignantly before the Committee, and to really air their concerns

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before the Committee.

We had to do that through a negotiated process. The Bureau had to agree to allow that APA access to the file. And the only way we could get them to agree to that was by having it be former CRC members.

Currently we have about five people that are willing to take on that task. And so it can be difficult to quickly get someone available for that.

And that's with the 60-day timeline, Judge. If we move that down to the 21-day timeline, it will be more complicated for us.

The case file review, the appeal process advisor, they've all improved the flow of information preparedness and, fundamentally, fairness of our appeals.

The 21 days will force us to eliminate the case file review. It will lead to scheduling confusion and a decrease in member participation.

Though under the settlement agreement and some ordinance changes that are coming or have already come -- not fully tracking that -- we've increased to 11 members, but our quorum definition remains at five.

And so we can conduct these appeal hearings with simply five members.

And, frankly, Judge, in discussing how we're going to orchestrate this, it seems we are going to have

1 to eliminate an 11-member panel and start doing panels of
2 smaller groups in order to get the appeals through.

3 This decreases diversity of our members, it
4 leads to a much more rushed process, and it does not
5 promote the fundamental underpinnings of the settlement
6 agreement before you. We would ask the Court to consider
7 that in determining whether or not to approve the
8 agreement, and we would ask the Court to take action to
9 fix that.

10 THE COURT: Thank you very much, Mr. Troy. I
11 appreciate those comments.

12 Let me invite up Mr. Mark Chasse, and then we'll
13 hear from Shannon Pullen, and then we'll take a break.

14 MR. CHASSE: Good afternoon.

15 THE COURT: Good afternoon. Please spell your
16 last name.

17 MR. CHASSE: C-H-A-S-S-E. My name is Mark
18 Chasse. I'm concerned about the adequacy of the
19 agreement, particularly about the lack of independent
20 oversight.

21 My brother, James Chasse, Jr., was beaten to
22 death by members of the Portland Police Bureau in broad
23 daylight on December 17th, 2006. The official stories of
24 the event from the City of Portland and the Bureau were
25 the opposite of the shy person I knew very well. They

1 said he was violent. They said he was urinating openly
2 near a public street. They said he was homeless. They
3 said he was a drug dealer. They said he was carrying
4 crack cocaine. And they said he was on drugs.

5 These official stories from the City of Portland
6 and the Portland Police Bureau were all lies, and over
7 time that truth came out. Notably absent from any of the
8 early official reports was one important fact that the
9 officers and the City actually had even before my brother
10 was dead; he suffered with mental illness.

11 How could those who are supposed to protect us
12 do this to him and say such lies? They could do it
13 because they knew they could get away with it.

14 I was dismayed, despite what was obvious to me
15 and many others, that the officers were not charged with a
16 crime.

17 My family filed a suit against the City. We
18 held out hope that the endless disciplinary process would
19 result in some ramifications. It didn't.

20 It became apparent that the City's primary
21 concern, fully aligned with the Bureau's interests, was an
22 obsessive level of secrecy, especially related to officer
23 discipline and oversight. This was inextricably related
24 to why the officers could feel they could get away with
25 what they had done. There would be no discipline as long

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1 as the Bureau maintained a monopoly over their system.

2 In a very real sense, the lack of police
3 oversight contributed to my brother's death.

4 I was very pleased to see the United States
5 Department of Justice open an investigation of the
6 Portland Police Bureau. This seemed to be exactly what
7 was needed to reform the Bureau; an outsider with legal
8 authority to monitor and oversee changes to the Bureau.

9 My main reservation was that the investigation
10 seemed to be initiated and guided by the City and the
11 Bureau, even though others were also urging the DOJ to
12 investigate.

13 It was the City's invitation and effort to co-op
14 the DOJ and ensure that the investigation was as favorable
15 to the Bureau as possible. Most importantly was the
16 Bureau attempting to ensure that their cherished system of
17 "no outsiders allowed" stay in place. I shared these
18 concerns during a previous comment period.

19 Many policy changes have been discussed, and
20 many are now proposed. Policies have been in place
21 before, but as experience has shown, if the individuals
22 and institutions don't honor them in good faith, they mean
23 very little.

24 I'll give an example. There was a policy in
25 force when my brother was tased that required the police

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1 to have him transported to a hospital due to Taser use.

2 The officers involved however, didn't tell the ambulance
3 drivers they used a Taser. Their justification for not
4 following this policy is that they claimed the Taser
5 didn't have any effect, despite the fact that my brother
6 just happened to pass out right after they used it.

7 Was it their role that they were only to
8 disclose Taser use if they thought the Taser worked? No.

9 Was that determination made in good faith by
10 those officers, or was it more motivated by an effort to
11 avoid the policy that they knew about?

12 What happened to the officers who were blatantly
13 violating the rule, which likely helped lead to my
14 brother's death? Nothing.

15 Again, what caused the lack of regard for
16 policy? They knew they could get away with it. Why?
17 Because the Bureau's disciplinary system lacks any real
18 independent oversight.

19 Maintaining the system has remained an ongoing
20 obsession for the Bureau and a concern for the community,
21 even while the final details of this agreement have been
22 put together. See the citations with my written testimony
23 in this weekend's *Oregonian* for examples.

24 What is it that so concerns the Bureau about
25 outsiders? Panels of random citizens, when they are

1 assembled as jurors, are more than competent in every
2 other instance to observe the Bureau's work and make
3 reasonable decisions about it. Even when someone's life
4 and liberty might be at stake. Why is it that no one,
5 unless they're hand chosen by the Bureau and steeped in
6 police culture should be allowed to look at police work
7 itself when employment issues are at stake? What makes
8 police work, itself, so confusing that others are
9 incapable of judging it like anything else? Nothing.

10 Look to who benefits for the answer. The
11 Bureau's favored system helps ensure those involved, their
12 own, will have maximum control over the results of any
13 investigation. The stakes are so high when the Bureau is
14 involved.

15 The citizens have given police the power to use
16 deadly force. This is an awesome power. Police work is
17 not a regular job, and it is hard to imagine a role the
18 public should have more interest in in a greater role than
19 ensuring it's done properly.

20 The citizens have never decided that they wanted
21 to give the police a monopoly to investigate themselves.
22 No. This is something the Portland Police have decided
23 for themselves. They've created a system to support it
24 and have guarded it jealously for decades.

25 So it comes as little surprise that this

1 agreement does not provide for any real independent
2 oversight. This is fully in character with the Bureau's
3 history. This is my main concern with the agreement.

4 The agreement, as I read it, has three regular
5 investigatory reporting mechanisms. One, an auditor, who
6 is contrary to the -- to any real meaning of auditor, not
7 independent and actually an employee of the Portland
8 Police Bureau; two, an investigator, who is, likewise, an
9 employee of the Portland Police Bureau; three, a person
10 titled Compliance Officer Community Liaison appointed and
11 paid for by the City of Portland.

12 Each monitor is either an employee of the
13 Bureau, the City of Portland, or otherwise beholden to the
14 City. This isn't even addressing what criteria will be
15 used, who will find the candidates for these positions, or
16 what the selection process will be.

17 The DOJ and the Court do retain the ability to
18 intervene if it appears the City is not complying with the
19 agreement. However, one has to wonder what the chances
20 are that will happen when the primary investigation is
21 done by people who are under the authority of the city
22 being investigated.

23 The better hope for lasting change is a
24 court-appointed monitor, like the DOJ's agreement with
25 Seattle.

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1 There may be some other way to have real
2 independent oversight and monitoring. But allowing the
3 entity under investigation to have the primary role,
4 particularly considering the Bureau's history, when it had
5 such a substantial role in the investigation, it seems a
6 formula for failure.

7 It stinks of an effort to maintain the system
8 that made the officers who killed my brother feel that
9 they could get away with it. This is not adequate.

10 This investigation in the agreement are unique
11 and historic opportunities to inform the Portland Police
12 Bureau. It would be great tragedy to many, including the
13 Bureau itself, if the Bureau's old system is allowed to
14 continue.

15 This agreement is not adequate in this regard,
16 and it should not be approved without real independent
17 monitoring and investigation and oversight. Thank you.

18 THE COURT: Thank you. Mr. Chasse, let me ask
19 you a follow-up: Why do you think the compliance officer
20 position is not sufficiently independent?

21 MR. CHASSE: Because they're chosen by the City
22 and basically under the direction of the City.

23 THE COURT: Thank you. Thank you, Mr. Chasse.

24 Ms. Pullen. There you are.

25 Please state your name and spell your last.

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1 MS. PULLEN: Shannon Pullen, P-U-L-L-E-N.

2 Thank you for hearing my testimony today, Judge
3 Simon. My name is Shannon Pullen, and I'm a mental health
4 advocate, educator and a former interim executive director
5 of NAMI Multnomah. I'm currently the co-chair of the
6 Portland Police Bureau's Behavioral Health Unit Advisory
7 Committee. I got involved with this work, because I have
8 two loved ones with serious mental health issues that have
9 brought them in repeated contact with police officers.

10 I am writing today in my role as the Behavioral
11 Health Unit Advisory Committee co-chair to inform you of
12 the progress we've made in the last year and what we
13 believe the Behavioral Health Unit needs to be successful.

14 So although we're not commenting on the fairness
15 of the settlement agreement, we felt that our input, in
16 terms of what has happened under the agreement, would be
17 useful today.

18 So our official charter states that the purpose
19 of the Behavioral Health Unit Advisory Committee is to
20 provide guidance, to assist the City of Portland, and the
21 Portland Police Bureau, in the development and expansion
22 of the Enhanced Crisis Intervention Team, EC-I Team; the
23 Mobile Crisis Unit Team, MCUT; the Service Coordination
24 Team, SCT; the Bureau of Emergency Communication Crisis
25 call triage; and the utilization of community-based mental

1 health services.

2 The BHUAC will analyze and recommend appropriate
3 changes to policies, procedures, and training methods
4 regarding police contact with the persons who may be
5 mentally ill or experiencing a mental health crisis with
6 the goal of de-escalating the potential for violent
7 encounters. We believe in the power of relationships and
8 look forward to the work we do together. That's our
9 official mission.

10 So the Behavioral Health Unit Advisory Committee
11 began meeting monthly in February 2013. Our main focus
12 has been to advise, attend, and review the BHU enhanced
13 crisis intervention team training, which took place over a
14 two-week-long session -- two week-long sessions in May of
15 2013.

16 Our initial work was to review the current C-I
17 Team training that all officers get, to review the
18 proposed EC-I Team training course, and to make
19 appropriate suggestions and recommendations.

20 During this process, members of the BHUAC
21 organized two separate panel discussions. One including
22 people who have experienced serious mental health
23 issues -- illness, excuse me, and one including family
24 members of those who have experienced serious mental
25 illness.

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1 mental health issues than other sections of the training.
2 We also encourage adding information regarding the mental
3 health recovery movement, as we want EC-I Team officers to
4 understand that recovery is not only possible, but should
5 be expected.

6 We also strongly urge for all presenters to
7 demonstrate deep respect for people with mental health
8 issues and using language that conveys that respect.

9 Finally, we strongly support the use of the
10 scenario-based training and how to make what part -- how
11 to make that part of the training as authentic and
12 realistic as possible.

13 Overall, the response from the BHUAC to the EC-I
14 Team training was one of genuine excitement and
15 enthusiasm. This was not a committee experience where we
16 sat around in endless conversation rehashing the same
17 issues. We truly jumped in and felt like part of the
18 team. The discussions were relevant, meaningful, and the
19 BHU team was receptive to our feedback.

20 We are also encouraged to meet EC-I Team
21 officers who seemed to really care. We know many officers
22 are drawn to this work because they or a family member
23 deal with mental health issues. Police officers and their
24 families are not immune to the impacts of living with
25 mental illness. I relate strongly to the urge to want to

1 Panelists came from a number of organizations,
2 such as Empowerment Initiative, NAMI Multnomah, the
3 Depression and Bipolar Support Alliance, and included
4 experiences of people who had encountered police during a
5 mental health crisis and those who have not.

6 In May, all BHUAC members were invited to attend
7 the training. My -- it was my understanding this is the
8 first time that outside, non-Bureau members of the
9 community were allowed to attend the training, and most
10 took this opportunity.

11 Some attended, essentially, the full week of
12 training. Additionally, some members participated
13 directly in the training as panelists or panel
14 facilitators.

15 Following the training, the BHUAC reviewed each
16 session of the EC-I Team training course, as well as the
17 post-training evaluation survey for recommendations and
18 feedback for the next ECIT training course, which is
19 planned for the spring of 2014.

20 In broad terms, our recommendations included
21 increasing the amount of time the training officers have
22 to interact and engage with people with mental health
23 issues and their families and loved ones.

24 In addition to the specifics panels mentioned
25 earlier, we see opportunities to include more people with

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1 help others who have been through a similar or traumatic
2 experience.

3 On a practical level, the BHUAC would benefit
4 from feedback, both direct and to survey mechanisms from
5 the newly trained EC-I Team officers. This on-the-ground
6 information will help to inform the committee as to the
7 experience of these officers, what parts of the EC-I Team
8 training they find most useful in daily context, where
9 additional trainings may be helpful, and where there are
10 areas of their jobs that are still causing challenges and
11 opportunities to further refine their roles.

12 We would also benefit from more overall feedback
13 from the community. The term "community" can mean a lot
14 of different things, but what we want to know
15 fundamentally is are people with serious mental health
16 issues and their families and loved ones having better
17 outcomes with EC-I Team officers and Portland Police
18 Bureau overall. What else can be done to allay the fears
19 that permeated so many of the discussions here today
20 around the Portland Police Bureau and the mental health
21 community.

22 In both of the above, finding ways to market the
23 success stories and promoting a positive message through
24 media, public speaking engagements, and other community
25 forums, may go a long ways in building and increasing the

1 dialogue that has been started within this advisory
2 committee. We know that positive stories rarely make
3 headlines, but we know there is good work happening in the
4 field.

5 Finally, and most importantly, the Behavioral
6 Health Unit Advisory Committee believes strongly that
7 without addressing the current gaps in the community
8 mental health system, the work of the newly formed BHU may
9 not have the full effect possible, despite the incredible
10 amount of time, people, and resources allocated to its
11 success.

12 Even worse, we fear that the program could
13 potentially have a limited or negative impact if the BHU
14 does not have the resources or tools needed in the
15 community to offer different outcomes.

16 We cannot train officers to work in a new way,
17 but not offer new related and appropriate tools or
18 resources to make that consistently possible.

19 If jail or the emergency room continues to be
20 the only choice for officers working at 2:00 a.m. on a
21 Saturday night, then we, as a community, will continue to
22 fail people in a mental health crisis, their families,
23 their loved ones, the officers, and, at the same time,
24 continue to criminalize mental illness.

25 Without addressing the availability of

1 accessible and appropriate community-based mental health
2 services, 24 hours a day, seven days a week, we believe
3 the long-term effectiveness of the BHU will be
4 significantly limited.

5 After reviewing the agreement, we recognize
6 there is a lot more work to do. As I mentioned in the
7 mission statement, we're just at the beginning of that
8 long charter, and we're continuing to be committed
9 partners in this work.

10 Thank you.

11 THE COURT: Thank you very much, Ms. Pullen.

12 You know, a slight change of plans. I
13 apologize. I want to take one more witness before our
14 break. I would like to hear from Mrs. Isabel Sheridan if
15 you're here.

16 Good afternoon, Ms. Sheridan. Please state your
17 full name and spell your last.

18 MS. SHERIDAN: Isabel, I-S-A-B-E-L, Sheridan,
19 S-H-E-R-I-D-A-N. I don't get surprised too often. Thank
20 you so much for taking this early. I have a commitment
21 that starts in a few hours.

22 THE COURT: I knew that.

23 MS. SHERIDAN: I know you did.

24 I'm going to throw away my script,
25 because -- because you've read it, and you have it in

1 hand, and it's really not -- as I've been listening, I
2 feel like I'm in the middle of something very historic
3 here, and I'm so moved by so many people's testimony.

4 I am a very white, very privileged -- by the
5 number of years I've been alive, I happen to be in that
6 zone where public school teachers got paid well in
7 suburban Philadelphia and even in Brooklyn, New York, in
8 the public schools. I've taught for 30 years in public
9 school. I've done trainings in Tallahassee, Florida. And
10 in those circumstances I've been privileged, deeply
11 privileged, to work with a diversity of children and
12 teenagers and adults, teaching, coaching, and, I must say,
13 learning to care deeply about those people.

14 I'm very moved by what we can do positively.
15 This is a web that's much deeper than the legalities, and
16 where I'm going this afternoon is to be part of a
17 three-person team that's training volunteers from the
18 University of Portland to work in Roosevelt High's
19 Training Center, Writing Center, to work with teenagers
20 who want to write.

21 And so I want to tell you that when I went to
22 the race talks a couple of weeks ago at McMenamins, I just
23 so deeply connected with Melissa Goff's comment that what
24 she was about, as a person in charge of training in
25 Portland Public Schools, was to facilitate a deeper caring

1 on the part of teachers so that their students -- and of
2 course we're talking about students of color, we're
3 talking about students outside the easy nine dots. The
4 nine dots I lived inside of. The other -- the other dots.
5 To care about those students. Because the research in
6 education says if you don't care, your children, your
7 teenagers, will not learn. They won't be successful.

8 And I am here to say that underneath all of this
9 testimony is the deep need for all of us to care about
10 children of color and young adults of color and teens of
11 color.

12 I can name the children and the teens who
13 changed my life. Eric Randall, Ben Mobily, Michael
14 Williams, Jiffy Brown, all on the other side of the
15 country, all grandchildren and great grandchildren of the
16 northern migration; all extremely talented young black
17 people.

18 It is time -- it is time for all the
19 institutions in this nation to get together to work this
20 out. That's what I'm doing for the rest of my life, and I
21 don't have to, do I? Because I'm that privileged person.
22 I could just forget it all. But I'm not going to forget
23 it.

24 I was at a CRC hearing, and that was just
25 extraordinary, because they took two votes; they took the

1 vote they had to take on what their rules were and the
2 person had acted reasonably, the supervisor. And then, I
3 think they did this for the first time, they took their
4 vote -- their straw vote of what they thought, and they
5 all -- I think they all sided -- and Mr. Troy can help me
6 with that -- they all sided with the complainant against
7 the police.

8 I'm not against the police. I'm just against
9 injustice. Thank you.

10 THE COURT: Thank you very much, Ms. Sheridan.

11 In a few moments, we'll take a 15-minute break,
12 but before we do that, let me tell the folks here that
13 still want to testify and haven't testified yet, that
14 based upon the number of people that have signed up to
15 testify, if we continue at approximately this pace, with
16 breaks here and there, we're looking probably at taking us
17 well past 9:00 p.m.

18 Now, I'm willing to obviously go past 5:00. Go
19 past 6:00, going up to 7:00. I don't think it's a smart
20 idea to go to 9:00, 9:30, 10:00. I'm willing to come back
21 tomorrow morning and continue this at 9:00 a.m.

22 What I would like you to do is think
23 about -- first of all, let me ask, by a show of
24 hands -- this is not a commitment and I'm not taking names
25 now, but are there folks here who could testify, instead

1 of this afternoon, come back tomorrow morning? By a show
2 of hands?

3 Okay. Let me ask you, if you're willing to do
4 that, if you can see the folks outside, at the table, and
5 tell them that you would like to be rescheduled for
6 tomorrow morning, that would be helpful and appreciated,
7 and then we'll start again at 9:00 a.m. tomorrow morning.

8 For those of you who can't or don't want to come
9 back tomorrow morning, I'm assuming that staying past
10 5:00 and even if we go until 6:00 or up to 7:00 is
11 something you're willing to do. If I'm wrong about that
12 or you absolutely can't, please tell the folks outside
13 that you really want to testify and you absolutely can't
14 stay past a certain time.

15 We will do the best we can with the resources
16 that we have, but for now let's take a 15-minute recess.

17 (Recess.)

18 (Open court; proceedings resumed:)

19 THE COURT: All right. Welcome back, everyone.
20 The next several witnesses -- I'm not sure if we can -- if
21 any were volunteering to go in the morning. I'm going to
22 call the next several witnesses, but if you're able to go
23 in the morning or if you're not here, that's fine. Let me
24 also tell you I would like to start tomorrow morning at
25 8:30 a.m. I would like to be sure everyone gets heard, so

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1 whoever we can't address tonight, we'll hear from
2 tomorrow, beginning at 8:30.

3 I'm expecting and hopeful that we will be done
4 before noon tomorrow.

5 Let me also state, too, that I've been asked by
6 courthouse security if we can take our last witness today
7 at 5:30 p.m. And so we'll go for another -- another two
8 and a half hours, two hours, 40 minutes, or so, and then
9 break for the evening and then resume tomorrow at 8:30.

10 Let me also just ask everyone, too. I
11 understand this is a very important matter. There's no
12 doubt in my mind about that. I understand the
13 significance. I understand also it's very important to
14 you people who wanted to come and testify, and I
15 appreciate and I want to hear what you have to say. But
16 as we're hearing from some more witnesses, we're probably
17 going to start hearing some points being repeated. I
18 don't think we need to do that. So if a point that you
19 wanted to make has already been said by someone else
20 previously in this hearing, please, in consideration of
21 the others folks than might want to make some new points,
22 give some thought to how you want to make your points or
23 repeat your points a bit more succinctly.

24 I do want to hear from as many people and as
25 many issues as people want to testify, but I also want to

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1 try to be respectful to everyone. So do keep that in
2 mind. If you want to make your comments a bit more
3 succinctly, please do that. If you can't, I understand.

4 Do we have in the room right now folks from the
5 Mental Health Association of Portland? Okay.

6 And do we have Lisa Haynes?

7 Okay. I'd like to hear from Ms. Haynes,
8 followed by Mental Health Association of Portland,
9 followed by League of Women Voters.

10 Are you here?

11 Excellent.

12 Followed by Training Advisory Council, followed
13 by Marva Davis.

14 Are you here? Davis?

15 Okay. Very good.

16 And then do we have Portland Commission on
17 Disabilities here?

18 All right. We'll see what -- Kristi Jamison?
19 Center for Intercultural Organizing?

20 Okay. And then after that we'll pick up with
21 Barbara Ross. Are you here?

22 T.J. Browning? Are you here?

23 Becky Straus from the ACLU?

24 All right. Very good. That will be the order
25 for the foreseeable future. We'll see when we get there.

Let me first invite Lisa Haynes.

Ms. Haynes, when you come up here, would you please state your full name and spell your last? And welcome.

MS. HAYNES: My name is Lisa Haynes, H-A-Y-N-E-S. Thank you, Your Honor. I want to first start out by saying that --

THE COURT: I want to adjust the microphone a little bit. There we go. That will be a little better. Thank you.

MS. HAYNES: My constitutional arguments were ignored. CRC and IPR were not receptive of any constitutional arguments that I made with respect to my allegation of the unjustified search of my body and backpack. I argued that the scope of a pat-down was exceeded when, in patting me down, the officers went through my pockets. I found out, through my advocate, Briana Swift, that going through my pockets when the officers did not immediately identify a weapon or contraband, exceeds the scope of a protective pat-down.

When we made this argument, IPR mentioned something like this. It's not a court of law and the constitutional law is not the focus of these IPR police complaint processes. Yet, my advocate and I mentioned the PPB policy explicitly requires that PPB members stay

up-to-date on the ever-changing Fourth Amendment law.

IPR and directive 650.000, CRC failed to accept any of our arguments regarding the Fourth Amendment, yet the Fourth Amendment is primarily what was -- excuse me -- yet the Fourth Amendment is primarily what was relied upon in exonerating the officers; namely, reasonable suspicion, pat-down for protection, and search incident to arrest.

These are all legal principles and the CRC made very clear that they did not know those legal principles. I legal -- I do not see how CRC can meaningfully or effectively review IPR's and IA's conclusions which rest on the legal principles, if they do not know them.

This was one of the most significant issues that I noticed with the CRC and IPR's process.

IPR and IA's response letter following IA's investigation was misleading, because it withheld material information that would have assisted me making my decision of whether to go through with an appeal to CRC. The findings letters sent after IA finished the investigation and the IPR approved it, saying IA command staff and IPR management reviewed the investigation to ensure it was accurate, thorough, and complete. It is recommended that each of these allegations be found exonerated.

The investigation would be -- the officers were responding to a call of a subject walking down the street

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and going through mailboxes. The description of the subject mail thief was similar to my appearance, in appearance.

Not until the CRC hearing did we learn about the most controversial aspect of the case; that the officers were looking for a 5'4" and 5'6" -- 7" -- sorry, 5'4" and 5'6" thin Hispanic male walking slouched over.

The IA and IPR findings never provided any description of the subject walking down the street and going through mailboxes.

I do not feel that a complaint can meaningfully decide whether or not to go through with an appeal if these type of misleading omissions by IA and IPR are allowed to continue.

IPR dismisses allegations with no explanation to complaints at all. IPR rejected investigating whether or not my initial stop was justified, with no explanation. It would have been helpful to know why the IA and IPR findings letter do not match up with the testimony given by the officers to the CRC. In my finding letter it made no mention that the officers searched me, and the contents of my backpack had been searched incident to an arrest.

The findings letter focused only on the search being for officers' safety, because the officers feared I was reaching for a weapon in my bag, when I suddenly

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reached for my backpack.

Both my testimony and one of the two officers' testimony and the police report said that the other officer lunged for my backpack. There is no explanation why IPR approved the lieutenant's findings in the findings there when two people involved in the encounter have the same testimony, yet they go with only one person's testimony.

The same thing happened in a hearing I watched involving Mr. Floyd McCorvey. There Mr. McCorvey was asked if he was patted by police officers after seeing him talking with a black woman after he was getting off of a bus. Both Mr. McCorvey and one of the officers said the woman he was talking to was black. One officer said she was white and a known prostitute.

IA and IPR cited one the officers' versions with no explanation. I felt disrespected by IA and IPR doing my complaint investigation by their irrelevant references to my -- to me and my son's past interactions with the police.

At the beginning of my appeal hearing to the CRC, the police lieutenant who conducted the IA investigation began summarizing his findings and why he chose as he did.

He begins by stating that Ms. Haynes was on her

way to court and at community service, and goes on to mention other interactions I had with the police; that this wasn't my first time interacting with the police and that another interaction I was placed in the back of a patrol car with my backpack and was calling the officers profanities.

I feel both of these items were completely irrelevant to the investigation and if it's enough to deter citizens from bringing complaints. What the officers failed to mention is that I was screaming because the officers were tasing my son almost to death.

Also, at times, during the CRC, I felt that the IPR was being over-casual, joking and lightheartedly laughing at times, which made it difficult for me to express the severe pain the police encounter caused me.

My son's criminal history and past police interactions were also included in the file to CRC Constantin Severe stacked the decks on me. I only discovered this because one CRC member mentioned that it was completely irrelevant. Had no CRC member mentioned it, you would have never known. IPR apologized for erroneously putting in the file.

CRC should be allowed to direct IPR to investigate certain issues. CRC only is allowed to oversee the allegations, chosen for investigation by IPR.

In my case, IPR rejected investigating racial profiling. CRC was unable to direct IPR to investigate this issue. Though IPR voluntarily agreed to, in my case, IPR should not be able to unilaterally prevent any -- prevent an allegation in the CRC's findings absent evidence to support.

THE COURT: Ms. Haynes, I think that's all. The time is up. Could you just give me your last final point or two, please.

MS. HAYNES: Yes. Well, both stops, both interactions with the Portland Police, when they -- when they stacked the deck and my brought my other case in, had nothing to do with this case. They said that there was two witnesses on my second case where I had explained that -- they showed my ID to the so-called witness, and I could identify one of them, which was a police officer from my first case, and I felt like I was being followed.

THE COURT: I understand.

MS. HAYNES: Thank you, Your Honor, for the time to get the truth out to the public. All officers should be labeled -- should be wearing the lapel. Thank you.

THE COURT: Thank you very much, Ms. Haynes.

Let's hear next from the Mental Health Association of Portland. Who are the representatives here?

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Mr. Renaud, if you could state your full name and spell your last, sir.

MR. RENAUD: I'm Jason Renaud with the Mental Health Association of Portland.

THE COURT: I apologize for mispronouncing your name.

MR. RENAUD: It's all right. My colleagues were not able to sustain, but I'll see what I can do. I'm Jason Renaud. I'm the volunteer board secretary for the Mental Health Association of Portland. Our work since 2003 has been to act as an independent, impartial witness to Portland's mental health system. And by "independent," we mean we do not receive funding from the Government or corporations or foundations or churches or other nonprofit organizations. Our independence creates our impartial position, and that position doesn't enable us to speak truth to power, inasmuch as we can get to the truth sometimes before other people do.

Our testimony today is in addition to our written testimony, which we provided to the Court earlier, along with other documents and scores of articles that we've printed on our website and in the local newspapers.

Mental Health Association of Portland believes the settlement agreement is not adequate, reasonable, or fair. Briefly, our written testimony describes five

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points of deficiency, which should be sufficient.

The agreement must be rejected by the Court for inadequacy of language. Throughout, there's language that's vague and difficult.

Two, the agreement must be considered by the Court to be entirely unfair because it was concocted largely without persons it purports to serve. I heard today that there were persons involved. We didn't know about that. We don't know who those people are.

Three, the Court must reject the agreement as unreasonable because the agreement fails to protect persons with mental illness from dangerous police officers immediately, and I'll speak more about that in a moment.

Until the agreement provides necessary and sufficient tools to cause the City to implement all agreed items, regardless of cost or difficulty, it is inadequate and the Court should reject it.

No. 5, failing to provide basic accommodations for disabled persons central to the agreement leaves the agreement inadequate and it should be rejected by the Court.

We recognize that there's been a reduction in the number of police killings of persons with mental illness since Department of Justice v. City of Portland was announced. And City Hall and the Bureau would take

claim for that change, pointing to improvements in training or policy. We believe those are not the only cause.

More influential has been the coverage by Portland media and attention by outside parties, matched now by national media, exposing cases of police brutality, especially against persons of -- with mental illness. Public pressure is a marvelous tool to change behavior, but it does not produce lasting change. Without the force of law, the media will chase another issue and the police will return to their old ways.

We think the agreement is overly dependent on training policy changes as solutions for brutality. It misunderstands the problem. No part of the agreement would protect persons with mental illness from Christopher Humphreys. Only one thing would, and that would have been to have a civilian-operated mechanism to immediately separate dangerous or rogue officers from duty.

Police are empowered to use force by citizens they serve on the condition that they use it only as necessary, in accordance with law, and certainly without brutality against the City's most vulnerable people.

If our civilian leaders cannot take that power back without argument or delay, we have absented control

of our police force to other police officers. I think we've heard that today.

By not removing Humphreys from the Portland Police Bureau, it showed it was incapable of policing itself, and a 13-year-old girl was hurt. By not implementing a civilian-operated mechanism to separate dangerous or rogue officers, City Council has demonstrated they're uninterested in police oversight, leaving it to others. Unless there's a civilian-driven mechanism to remove officers who abuse the badge, people with mental illness will not be safe and Portland will not have government by the people for the people.

Finally, I'll speak about one item of the agreement. Item number 90. That's been talked a little bit about today in the walk-in center. I won't quote the item. We have that in the text. But I think everybody knows that the agreement calls for a drop -- drop-off centers and walk-in centers.

As our written testimony indicates, we reviewed the agreement with other mental health leaders and professionals from many agencies back in January of 2013, over a year ago. They were in general agreement that the agreement is inept in its conception of which services are needed and how best to provide them.

But the agreement does require the provision of

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drop-off and walk-in centers for persons in crisis and these, everyone agreed, were unquestionably needed.

It's important to note that the agreement states that the drop-off and walk-in centers would be available online with clients, patients in them by summer of 2013. It's now spring of 2014.

To our knowledge, no work has been done by the City to bring these services to the community. Going to the state legislature and asking for money is not working on the problem. The City, therefore, is already out of compliance with the agreement.

We toiled during the past year. We formed a work group with City Hall involvement, with the Mayor's office involvement, involvement of many excellent experts, to discern best practices, to create basic clinical guidelines, to design a budget, to develop hiring strategies, to anticipate siting and systems integration issues. That has all been quashed by the City, as I discovered about a month ago when I was told in a private meeting with the Mayor's senior staff. The Mayor has no intention of including either a drop-off center or a walk-in center in his 2014/2015 budget.

This senior staff repeatedly stated the City neither had the ability nor the responsibility to developmental health services.

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When I pointed out that this was immaterial because an agreement had been signed, it was rebuffed.

Awkwardly, last week Mayor Hales met with members of the -- his Portland Commission on Disability to discuss public safety. During that meeting Hales contradicted his senior staff by saying he fully intends to comply with the entire settlement agreement. Note this talk came just days before this meeting and in front of prospective testifiers of this hearing, and note that the mayor's statement is not reflected in any of his budget drafts for the upcoming year.

We believe that a safe haven, such as a walk-in center, is the only item in the agreement which could have supported -- which could have supported and saved a person such as Keaton Otis, Jack Collins, James Chasse, Aaron Campbell, Kenny Backman, or Brad Morgan.

Police are not the solution to mental illness, unless the municipality, by its stupidity or arrogance, refuses to provide necessary and sufficient services. Our experience, our witness, is that the police in the criminal justice system are the most expensive and least effective solution for mental illness.

The City's noncompliance shown in both delay and denial proves it is a noncooperative partner in this agreement, and, therefore, the Court should proceed to

bring both parties to trial and make a final binding ruling to compel compliance.

Thank you.

THE COURT: Thank you, Mr. Renaud.

Let me invite up the representatives from the League of Women Voters. Do we have Ms. Noel and Ms. Aiona? Whichever one of you wishes to go first, you may. Please state your name and spell your last, please.

MS. NOEL: Thank you, Judge Simon.

My name is Margaret Noel, and the last name is spelled N-O-E-L. With your permission, I would like to give a brief introduction and then our action committee chair Deborah Aiona, is going to give our specific points, and I will conclude with a very brief summary.

THE COURT: Very good.

MS. NOEL: I'm going to also try to summarize our written testimony so that I'm not giving you the whole thing.

THE COURT: And I have read it, by the way, and I appreciate it.

MS. NOEL: Okay. Well, the League of Women Voters has been involved in police issues since the early 1980s, so for more than 30 years, and we started with a study of the Portland Police Bureau, which led -- it was a two-year study. It led to a position, which says, in

part, just and effective enforcement of the law demands good police-community relations, and it also says that we support citizen involvement in the functioning of the Portland Police Bureau.

We have been involved, since the formation of the first citizen oversight committee, the -- or oversight agency, the Police Internal Investigations Auditing Committee, or PIIAC, and we've been monitoring -- we were monitoring, during the existence of that agency, its activities. We also participated in a work group that then was reviewing PIIAC and tried to make recommendations for improvements.

The majority of that work group, including the League, recommended reforming PIIAC by giving it powers to conduct an independent investigation, compel civilian and officer testimony, recommend policy changes, and review completed investigations of police shootings, among other things.

The City Council asked the auditor to come up with a plan, and that plan didn't quite meet all of our considerations, but it did give limited authority to the -- to the new agencies which were the internal: The Independent Police Review division, IPR, and the Citizen Review Committee, CRC. And it gave limited authority for independent investigations to -- to the IPR. But the IPR

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hasn't been using that authority as much as it might. In fact, it only first did an independent investigation last year.

Many in the community don't, as we've heard, trust the Bureau to investigate police officers. And, furthermore, the Department of Justice settlement agreement, in paragraph 128, calls on the City to enable meaningful independent investigations by IPR.

We regularly monitor the CRC meetings. We were part of a police oversight stakeholder committee in 2010. And, again, we were calling for independent investigations.

In argue, an effective oversight system can increase public understanding of police policies and procedures; discourage misconduct through retraining and discipline; provide individuals who feel they have been harmed by the police, an avenue for addressing their complaints; and improve police practices by recommending policy changes.

And we have worked with other advocates for years to improve the oversight system to ensure meaningful public participation and the public's right to know the public's business.

Our comments on the settlement agreement focus primarily on the issues that are related to the oversight

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system and public involvement and transparency. The League appreciates the work of the DOJ and the City of Portland devoted to the agreement. A number of serious issues were uncovered during the investigation, and appropriate remedies are included in the agreement.

We believe, however, that there are some provisions that are not fair, adequate, or reasonable, and urge the Court to facilitate modifications to the agreement that would address community concerns.

The CRC performs an extremely important function by hearing appeals of misconduct cases, and serving as a window into the workings of the Police Bureau through its reviews and audits of closed cases.

Since the CRC's creation, the community, including the League, has recommended that its role be strengthened. Instead, the agreement fails to address the most troublesome issues and adds unreasonable expectations to this hardworking volunteer committee's duties.

And, with that, I'm going to ask Ms. Aiona to continue with our testimony.

THE COURT: Thank you, Ms. Noel.

Welcome, Ms. Aiona.

MS. AIONA: I'm Debbie Aiona; it's spelled A-I-O-N-A.

In the timeline, For Appeals of Community

Complaints of Police Misconduct: Community members and officers have the option to appeal their cases before the CRC if they disagree with the commander's findings. The process is complex, and, given CRC's monthly meeting schedule, can require several separate meetings for complicated cases.

Even when the outcome does not go the appellant's way, the careful consideration CRC devotes to each case gives appellants a sense of satisfaction, because they know that they were heard and that a review committee evaluated their arguments thoroughly.

The agreement calls for these appeals to take place within an unreasonable time frame of 21 days. At the point the complainant files the appeal, the CRC is notified that the case file is ready for review. A file must be read in city offices, generally during work hours, and these files are sometimes hundreds of pages long.

According to current protocols, a retired CRC member is assigned to serve as an Appeals Process Advisor for the appellant. The APA and appellant usually meet more than once. The APA explains the process and assists the appellant in developing a presentation of the case for the hearing.

Then the ordinance requires that a case file review be scheduled at which the CRC discusses with

Internal Affairs and IPR any concerns that it may have about the quality of the investigation. If CRC identifies shortcomings, the agreement requires IA or IPR to undertake additional investigation.

Once the investigation is complete, IPR schedules the appeal hearing.

The appeal hearing ends the process if CRC agrees with Bureau findings. But if the CRC folks do challenge the findings and, after consultation with the Chief, the Bureau disagrees, a conference hearing is scheduled.

At that hearing, the CRC and Bureau attempt to reach agreement on the findings.

If that fails, City Council hears the case, after reviewing the case file, and makes a final decision.

The number of steps needed to reach the end of the process makes it virtually impossible to complete within 21 days.

More importantly, rushing through an appeal will be detrimental to the appellant's experience, especially if the individual has a mental illness.

Currently, the APA has sufficient time to schedule meetings with appellants and give them whatever assistance they need.

IPR has suggested that the case file review may

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need to be eliminated in order to meet the 21-day timeline. This part of the process has been in place for the last several years and has reduced the need to suspend appeal hearings when the investigation was incomplete. Appellants find it distressing to prepare for an appeal hearing and then have it suspended.

In recent months, the CRC's scheduled additional meetings in order to process appeals more quickly. During that time, two of the newer CRC members resigned, citing the unreasonable workload, and other CRC members are showing the strain.

Public participation in government is essential for our democracy. We need to have reasonable expectations of community volunteers.

We believe it is possible for CRC to process an appeal in a manner that respects the desire of appellants to have their cases thoroughly examined and get the support they need within a two- to three-month time frame.

Appeals of Police Shootings to the Citizen Review Committee: The agreement includes a provision that affirms the City's current practice of denying family members or survivors involved in police shootings the right to a CRC appeal. These individuals often pursue their cases in a court system, but City settlement payments do not hold the involved officers accountable

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through the disciplinary system. These cases should be subject to the same administrative review, including a CRC appeal, as other types of cases.

The Citizen Review Committee Standard of Review: Now, you've already heard about this, so I'm cutting this short --

THE COURT: Thank you.

MS. AIONA: -- but we agree that, at a minimum, this provision regarding the standard of review should be removed from the agreement so the CRC, City, and community can continue to explore other options.

Police Review Board Hearings: The DOJ letter of finding points, on page 33, to the curious nature of the Police Review Board hearings. There's a whole host of participants at hand, including the involved officer, if he or she so chooses.

But the person whose case is being discussed is excluded. At a recent City Council hearing, the mother of a young man suffering from mental illness testified about the worry and distress caused by not knowing what is happening with the complaint he filed. With the exception of the CRC appeal, everything else takes place behind closed doors. Opening the PRB hearings to the community member would make the process fair and more humane.

Public Comment on Police Policy Revisions: The

1 agreement calls for the Chief to post on the Bureau's
2 website proposed policy revision for public comment.

3 In addition, the CRC should be consulted between
4 the time the public comment period ends and the policies
5 are finalized.

6 Through its appeals of community complaints of
7 police misconduct and audits of closed cases, the CRC is
8 in a unique position to evaluate policy revisions. Adding
9 this step to the public comment process would help ensure
10 that the lessons the CRC learns through its work would be
11 applied to police policies.

12 And last part I'm talking about is independent
13 investigations, and I think you've probably heard a lot
14 about that, so I'll just read the last paragraph. Given
15 IPR's history of conducting an independent investigation,
16 only once, since its creation, a reasonable approach would
17 be to add some teeth to the agreement by being specific
18 about what types of cases IPR should investigate
19 independently.

20 The 2010 police oversight stakeholder committee
21 recommended IPR investigate shootings, deaths in custody,
22 physical injury requiring hospitalization, racial
23 profiling, illegal searches, and conflicts of interest.

24 If the decision is left to IPR discretion, as
25 the agreement states on -- in paragraph 128, we

1 feel -- fear that independent investigations of community
2 complaints will be few and far between.

3 And now Margaret will conclude.

4 THE COURT: Thank you very much, Ms. Aiona.

5 Ms. Noel.

6 MS. NOEL: Thank you.

7 Obviously, as Debbie has stated, some of the
8 provisions in the agreement pertaining to the oversight
9 system are likely to make the process less fair and
10 reasonable for people appealing disciplinary findings in
11 misconduct cases, and she has detailed those.

12 Portland values public participation and
13 transparency. Our community volunteers should be treated
14 with respect, and the demands placed on them should not
15 exclude participation by those who -- with outside
16 employment or families.

17 The abbreviated appeals process timeline could
18 very well do that.

19 And, furthermore, the differential reasonable
20 person's standard is confusing and frustrating to the
21 Citizens Review Committee.

22 Finally, a recurring theme, of course, is the
23 desire for independent investigations. The DOJ and City
24 have moved closer to that ideal, but for this agreement to
25 be fair, adequate, and reasonable, the City needs to find

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1 a way to enable IPR to conduct investigations without
2 Police Bureau assistance.

3 Thank you very much for your consideration.

4 THE COURT: All right. I thank the League of
5 Women Voters for their comments.

6 Let me invite now Ms. Marva Davis, followed by
7 Ms. Kristi Jamison.

8 Ms. Jamison, are you here?

9 Okay. So it will be Ms. Marva Davis, followed
10 by Ms. Kristi Jamison, followed by representatives for the
11 Center of Intercultural Organizing, followed by
12 Barbara Ross, T.J. Browning, and Becky Straus from the
13 ACLU.

14 Marva Davis.

15 MS. DAVIS: Hi. John Davis is my husband.

16 THE COURT: Welcome, both of you. Please state
17 your full name and spell your last.

18 MS. DAVIS: Davis, D-A-V-I-S. And the first
19 name is Marva.

20 MR. DAVIS: John, J-O-H-N. Davis, D-A-V-I-S.

21 THE COURT: Welcome. You may proceed.

22 MS. DAVIS: I am pretty sure everyone knows who
23 I am. I'm Aaron Campbells's mother. In 2010 he was shot
24 in the back with his hands interlocked on his head,
25 getting mixed messages from police officers.

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1 So, anyway, I'm just here, and I am going to say
2 that I don't feel that it's adequate or fair, to what
3 happened to him, and I feel like the police officers need
4 to be accountable for what they have done.

5 We already know that we have had disagreements
6 with the mayor and everyone has had his idea of what
7 happened, and now we have an officer, who's sitting at
8 home, getting a paycheck every two weeks, and I don't feel
9 like it's fair. Something needs to be done.

10 My son trusted police officers. They asked him
11 to come out. He hadn't committed a crime, and he -- he
12 said that if he came out, "All you're going to do is shoot
13 me."

14 They said, "No. All we want to do is talk to
15 you."

16 He came out, and he was shot. I mean, we know
17 the story, and we have been harassed.

18 My oldest son has been followed by the police.
19 Now, you say they need training. They should have had the
20 training before they came in office. Training for what?
21 You know right from wrong. They were following my oldest
22 son around, and he went to park and sat down because he
23 seen them following him. And when he came out of the park
24 three -- 30 minutes later, they said, "Hey, we want to
25 talk to you." And then they're, you know, frisking him

1 and checking his phone. He said, well, they asked if they
2 could turn his phone on, and he said no. They turned it
3 on anyway.

4 Then they asked him -- I know a lot of people
5 don't know. They asked him was he related to the
6 barbecued Campbell. What was that supposed to mean?

7 So are you trying to tell me to give the City
8 \$26 million to train them for something they should have
9 already known? I'm just hurt. And the community do not
10 trust the police. Where are we going to draw the line?
11 Somebody needs to be accountable for what has happened.

12 You've got James Chasse. His -- he's gone.
13 They punctured his lungs. What is going on in the police
14 department?

15 So we are going to give them some money to -- to
16 do what? To train them for something they should already
17 know? So I'm frustrated and I'm confused. There need to
18 be some answers. And the -- and the police officer needs
19 to be accountable for what they have -- we've been doing
20 this for centuries. When is it going to stop? Why are we
21 judged by the color of our skin? Everybody are human.
22 Everybody should be treated fair.

23 So, you know, I'm just -- I just want to say
24 that I don't think it's reasonable and it's not adequate.
25 We need to go to court and we need to address this, and it

1 needs to be in history that we did go to court to try to
2 solve this problem. We all need to get along. We all
3 need to love each other and treat each other with respect,
4 and it's not happening.

5 Everybody knows police, there's some good ones
6 and there's a lot of bad ones, and they need to be -- it
7 needs to be addressed.

8 So, as far as my youngest son goes, he comes out
9 of a restaurant, and the police has their car parked
10 behind him and trying to intimidate him and what's the
11 problem? Why all of a sudden is your police car behind my
12 youngest son's car? He is coming out of an Olive Garden
13 restaurant. They intimidate.

14 I'm at a light, four cars behind all these other
15 cars, and the police officer pulls up to my car. There's
16 one car in the front, and he's staring at me like I've
17 done something wrong. So what is that? That's
18 intimidation. It needs to be -- it needs to stop. And I
19 feel -- then to have the Department of Justice telling
20 me -- it's talking about some color of law. Okay, I go
21 and try to research this color of law.

22 Well, from what I have learned, the police have
23 violated the color of law. They're using their power and
24 what they are doing is not right. And I'm not
25 understanding why the Department of Justice is -- seems

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1 like they're all in cahoots. They just want to just brush
2 this over and be through with it and move on.

3 I don't think this is going to solve the
4 problem. The community don't trust the police. But when
5 the community see that the police is being held
6 accountable for the things they're doing, then they begin
7 to say, yeah, well, now we trust them. Now we trust that
8 they'll -- justice will be served. But right now the
9 community does not -- they don't see that. The police
10 officers, they are getting away with so much.

11 I know we're not -- we understand. Everybody
12 knows what's going on. So all I -- it's not fair, and
13 it's not adequate.

14 THE COURT: Thank you. Thank you very much,
15 Ms. Davis.

16 Mr. Davis, did you want to say anything else,
17 sir?

18 MR. DAVIS: What she said here we basically
19 agreed to together, so --

20 THE COURT: Very good. Thank you both very much
21 for coming.

22 We'll hear next from Kristi Jamison and
23 Empowerment Initiative.

24 Please state your full name and spell your last.

25 MS. JAMISON: Kristi Jamison, J-A-M-I-S-O-N.

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1 So similar themes, I'll just warn you,
2 and -- but a little bit of some adjustments to earlier
3 statements that you've already heard.

4 So thank you, Judge Simon. Again, my name is
5 Kristi Jamison. I'm the executive director of Empowerment
6 Initiative, a peer-managed wellness program that's been
7 active in Portland for nearly a decade. I want to thank
8 you for the opportunity to be heard.

9 I have concerns about the enforcement provisions
10 of the agreement and believe the agreement to be
11 inadequate without additional language. I feel the
12 agreement is not adequate to address the urgent and
13 well-documented needs for safe alternatives for persons in
14 crisis.

15 The drop-off center referenced in paragraph 88
16 appears to be out of compliance and, of course, the Mental
17 Health Association of Portland spoke eloquently about the
18 details of that.

19 The breach, as it appears to me, further erodes
20 the -- the differing communications we receive as
21 advocates from the City. It further erodes the fragile
22 trust between the community and the City of Portland
23 Police Bureau.

24 In -- in 2000 I was part of the mental health
25 redesign team that closed the Providence Crisis Triage

Center with a predictable outcome.

According to the report that earlier Dr. Bennington-Davis referenced and that was completed in March of 2012. Cited police custody holds have increased as a result of the lack of safe resources, safe alternatives, and continuing decrease in community-based services being readily available to first responders.

The data captured between 2009 and 2012 indicated that more than half of the police officer-assisted custody holds were repeat holds. The report concluded that the increased contact may be driving the use of force in these situations. This is a matter of imminent concern and a continuing threat to public safety. I strongly urge proactive oversight of the timeline set for each element, which, in the case of -- again, of the drop-off center, I'd just like to restate that it appears to be already out of compliance. Each day the community is without this, persons I'm representing continue to be at risk.

Further, I encourage the Court to retain jurisdiction and to issue semiannual reports to the community, using multimedia, including media that respects the needs of individuals with sight and hearing impairment as to the progress of the agreement or whatever is going to happen next.

It is the only way for the -- for disability advocates to determine the agreement or whatever is next as having the intended reforms, as well as being honored as written or agreed by all parties.

I ask this on behalf of persons with mental health and addictions issues, from the deaf and hard-of-hearing community, and from those with physical limitations who are routinely forgotten in this process.

I ask on behalf of the people who understand authority differently and may need accommodation to comply with police commands. Without recognized and adequate accommodations for disability, police encounters can quickly escalate and become dangerous. I will remain concerned for the welfare and safety of the community until a clear path forward is established. And whatever the next step is, is going to be -- I really am hoping to see that it's a robust, transparent -- has robust, transparent civilian oversight, really are deeply embedded.

In closing, I'll leave you with the words of the late President John F. Kennedy. Quote: The rights of every man are diminished when the rights of one man is threatened. Thank you.

THE COURT: Thank you, Ms. Jamison.

Who here speaks for the Center for Intercultural

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Organizing? Who do we have from that organization? Come on up, please.

And in whatever order you wish, please state your name, spell your last. Welcome.

MS. MADRID: Thank you. Carmen Madrid, M-A-D-R-I-D.

Thank you, Your Honor, for a fairness hearing with regards to the settlement agreement between the Department of Justice and the City of Portland. My name is Carmen Madrid. I'm a community organizer for the Center for Intercultural Organizing. I'm here today to point out some key elements of the most recent negotiations between the Albina Ministerial Alliance, the City of Portland, and the U.S. Department of Justice.

As a mother of three sons with way too many things to do in the day to make sure they're staying out of trouble, I'm very selective with my time and the issues which will have a truly strong impact to our community. This is a case that will literally be a cornerstone that will shape not only the Portland Police Bureau, but can also be a model for other cities, counties, and possibly nationwide.

The recommendations, as highlighted in my testimony today, speak to me personally as a mother, knowing that my multiracial sons will be safe.

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While there has been positive movement in the settlement agreement, for example, policy changes and de-escalating the use of violence or a subjective Internal Affairs investigation if an officer has been found to violate someone's rights in civil court, there are still many areas in the settlement that need to be strongly reconsidered in order to create a police bureau that operates in fairness and equity, as well as strong measures in police accountability.

The first point to consider is that many sections of the settlement are very inadequate. While it begins to address certain issues, it is not a comprehensive solution to make the current settlement complete.

For instance, a new position has been created as a Compliance Officer Community Liaison to oversee the implementation of the settlement agreement.

However, the role does not have authority to make recommendations to the Court or to provide any enforcement that the City is compliant. It clearly has no teeth in that position.

A tokenized role will not be effective for the work that is trying to be accomplished with regards to oversight.

The recommendation is to provide a role that has

1 the ability to make recommended changes and enforces
2 accountability to the settlement in alignment with
3 supports from Albina Ministerial Alliance and the
4 community. The current role is not adequate.

5 The settlement has agreed that \$25 million over
6 the next five years will be allocated to improve
7 accountability in the Portland Police Bureau and to create
8 programs to de-escalate police use of force.

9 At this time, the City does not have a clear
10 plan as to where and how the funding will be used. The
11 recommendation is to provide a clear plan, aligned with
12 community best practices, and including measurable
13 indicators to demonstrate the plan's effectiveness.
14 \$25 million is a lot of taxpayer dollars and money to be
15 spent without any accountability or transparency.

16 The current funding plan, because of the lack of
17 guidelines, is inadequate.

18 The other piece to mention is inadequacy in the
19 lack of data collection in the process. As you know, data
20 is powerful. And when data is not collected and
21 disaggregated at its granular level, there are missed
22 opportunities for understanding the entire story. The
23 settlement does call for enhancements to data collection
24 but would not require the Portland Police Bureau to track
25 and report all community contacts, including mere

1 conversation.

2 The data that has already been collected by the
3 Portland Police paints a very bleak picture for
4 communities of color. Improved data will allow to take
5 further action on the targeting and mistreatment of
6 communities of color, immigrants, and refugees. Current
7 data collection measures are inadequate.

8 Lack of Fairness: The 48-hour rule. When a
9 police officer is involved in a deadly force incident, the
10 48-hour rule is still intact, which gets in the way of
11 authentic investigation of the Independent Police Review
12 board. It diminishes the power of the Independent Police
13 Review board to do a comprehensive review and the job that
14 it is supposed to do. This is unreasonable and not fair.

15 Individuals who survive police shootings or are
16 the survivors of a death in custody are not allowed to
17 appeal to the Citizen Review Committee. This is
18 completely unreasonable and unfair.

19 And then there's lack of community involvement.
20 How is it that when the Internal Police Review board,
21 which considers use of force cases and potential
22 discipline for officers, remains closed to the public and
23 any victims of potential misconduct. How can this be
24 fair? It is unreasonable and unfair that hearings are not
25 open to the public.

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1 There's also a Training Advisory Council
2 advising Portland Police on its training policies.
3 However, there's no involvement or feedback from the
4 community in developing training materials and procedures.

5 The settlement agreement should require
6 community member involvement in all aspects of training,
7 including development, facilitation, and participation in
8 training. There also needs to be a pre and post
9 evaluation as to how they have been able to put these
10 practices, designed by the community, as far as what they
11 have learned.

12 I request, Your Honor, for a review of these
13 elements and for open negotiations that are more fair,
14 reasonable, and adequate, in order to enforce more
15 accountability within the Portland Police Bureau. As you
16 review these recommendations, keep in mind that the issue
17 of racial discrimination has not been addressed throughout
18 this entire process.

19 The Portland Police have a clear and documented
20 pattern of targeting and mistreating people of color. I
21 want to add that I'm often asked: What is your secret to
22 being a great mom? And, in all humility, I answer that I
23 am raising three young men, and it is my responsibility to
24 make sure that they positively contribute into this world
25 with respect and dignity.

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1 However, it is an entire community that supports
2 and empowers our youth to be successful and not to
3 demonize them because of the color of their skin. As an
4 effective parent, I still live by what some people say are
5 old-fashioned rules that hold them accountable for their
6 actions.

7 However, let me tell you my very real
8 experience. The first time that I picked up a call coming
9 from my son's cell phone and it was a police officer on
10 the other end, most parents would actually think, "What
11 did my son do now?" But in my very real world and that of
12 so many other mothers with sons of color, instead, your
13 heart sinks, and, instead, you think did they hurt my
14 child and is my son still alive?

15 The settlement must have these elements of
16 fairness, adequacy, and reasonableness in order to be
17 meaningful and hold our law enforcement accountable.

18 We should operate under a just society that
19 serves and protects all its community members. I
20 respectfully ask you to reject this agreement so we can
21 continue to work towards more safety and accountability
22 for everyone in our community.

23 THE COURT: Thank you very much, Ms. Madrid.
24
25

(Section 5, Court Reporter Dennis Apodaca.)

THE COURT: Is anyone else here from the Center for Intercultural Organizing to speak?

MS. NARAGUMA: I am Laura Naraguma.

N-A-R-A-G-U-M-A. I am an intern with the Center for Intercultural Organizing.

I would first like to thank all of the parties involved for taking part of this amicus hearing and allowing the committee to evaluate whether the settlement agreement is fair, reasonable, and adequate. The settlement agreement puts forth many positive changes that address the issues of the Portland Police Bureau's pattern of abuse, of excessive force, especially when dealing with people who have or appear to have mental illness, but unfortunately these changes do not adequately protect the city's residents.

Last May, I graduated from Reed College in southeast Portland with my thesis in sociology titled "African Immigration and Assimilation to Portland, Oregon." At its core, my thesis tested the African community and the sociological theory of assimilation. These theories described the adaptive processes that immigrants develop in order to survive in their new community.

For my thesis, I conducted statistical and

qualitative research involving interviews with 20 African immigrants in Portland. Aside from testing these sociological theories, writing my thesis allowed me to learn about which issues most resonate with the African community in Portland.

Of the 20 immigrants I interviewed, six were women, and the other 14 were men. Through the course of our conversations, I was shocked to learn that each and every one of the men I interviewed personally had experience which could only be described as police misconduct, profiling, and abuse. In order to make my thesis as descriptive as I could, I intentionally targeted immigrants of many walks of life. Some were students and community leaders, while others were artists or working people trying to start a new life.

For my thesis, I investigated the integration and assimilation. I also discovered that for people of color in this city, police profiling and abuse is an extensive and wide-reaching problem. I was terrified to discover this, but not entirely surprised, as structural racism became a major theme of my thesis.

I was in Burundi. I have lived most of my life in the continental U.S. And while my parents finished their degrees, I went to Head Start and learned to be an American and how I ostensibly have the same rights of

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other native-born Americans. In my brief adulthood, though, I have seen this notion smashed time and time again because of my skin color.

As a person of color, the observations that I have made in my thesis only strengthen my own fear of police and police abuse. It is particularly troubling that the settlement agreement does not explicitly address the specific issues of race and police misconduct.

The Portland Police Bureau and the U.S. Department of Justice have the unique opportunity to collaborate with the Albina Ministerial Alliance to change the police culture of abuse and intimidation and develop a more efficient, fair police force. The settlement agreement adopted in November of 2012 takes many positive steps towards change by outlining changes in Internal Affairs, review protocols for investigation, and mandating the establishment of annual unbiased performance reviews.

The settlement also institutes many common sense safeguards against abuse, such as requiring police to de-escalate their violence as incidence decreases, forbidding the use of derogatory epithets and prohibiting officers who have sustained complaints of violence and abuse from serving in Crisis Intervention Teams. Unfortunately, the settlement inadequately protects our civil liberties and in places even inhibits police

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accountability.

Many of the issues relating to the settlement's inadequacy stem from the differential treatment afforded to police officers. Provisions of existing collective bargaining contracts allow such leniencies as the 48-hour rule, which allows a 48-hour reprieve after incidents with the use of deadly force before officers can be interviewed, and this unreasonably hinders the investigations and allows unfit officers to continue patrolling the community with a gun at hand.

These provisions were designed to protect the police and allow them to gain legal counsel. This is something that is not to the same degree protected for civilians who are suspected of murder, shooting, or abuse of others. Police must be held to a higher accountability for their actions, a much higher standard of accountability.

The key to this higher standard is the ability to investigate incidents of accident or flagrant use of force thoroughly and as quickly after the incident as possible. Victims of civilian crime have the reasonable expectation that this right is protected, and the victims of police violence should likewise be protected. Unfortunately, the current setting equates police abuse to a violation of protocol rather than a crime.

1 The settlement agreement also actively and
2 intentionally hinders police accountability by prohibiting
3 appeals to the dubious entitled "Citizen Review
4 Committee," keeping the police board effectively as a
5 hidden court just for police.

6 The settlement agreement in its current state
7 sets unreasonable and unrealistic standards that give
8 police the benefit of the doubt and place an expiration
9 date on investigations into police behavior and ultimately
10 evaluation of their fitness to be an officer.

11 It is unfair, unreasonable, and inhumane not to
12 allow the victims who survive police shootings or the
13 families of someone who dies while in police custody to
14 appeal to the Citizen Review Committee. By creating this
15 roadblock to legal consequences for violent officers, the
16 settlement agreement ushers in further abuse, not just for
17 people with mental illness or people of color, but for
18 every single resident of the city.

19 The City should implement "the Fred Bryant,"
20 named after the later father of Keaton Otis, another young
21 black man gunned down by the Portland Police. After the
22 murder of his son, Mr. Bryant was denied the right to
23 appeal, and there have been no consequences for the
24 officers who killed his son in the flagrant and mistakable
25 use of force. How am I suppose to feel safe here? How is

1 any black person supposed to feel safe here?

2 The settlement agreement inhibits police
3 accountability by leaving the Police Review Board closed
4 to the public. This precludes the option of public
5 monitoring and does not allow for the persons and officers
6 involved in the incident to be informed of possible
7 misconduct and investigation.

8 Police monitoring is key to restoring the
9 community's faith and confidence in the efficacy of the
10 Portland Police Bureau discipline. The conducting of
11 police work are often inherently stressful and
12 life-threatening, but we communities also have reasonable
13 expectations that these officers of the law put in place
14 to protect and serve will use the minimal amount of force
15 needed to do their job. Unfortunately, that expectation
16 has not been met, not even close.

17 The settlement agreement does not adequately or
18 explicitly call for officers to adhere to that standard
19 with civilians exposed to continual police brutality. So
20 the settlement agreement on paper attempts to create
21 bridges between the Portland community and the police. It
22 does not adequately map out what this collaboration will
23 entail or assign any leverageable power to the community.
24 I honestly do not trust the Portland Police to develop
25 this program without the input of the community.

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1 The settlement agreement also fails to enforce
2 tracking of all police interaction with the community,
3 which limits the valuable inside information we can gather
4 about the community and how it interacts with the police.

5 The Portland Police Bureau in the past has
6 complained of not having enough statistical information to
7 evaluate what form racism takes place in the force. This
8 is an opportunity for us to inquire and cultivate a new
9 relationship by building new data and acquiring new
10 information about the community.

11 To further build ties with the community, the
12 Portland Police and Albina Ministerial Alliance should
13 have a formal and structural inclusion as either
14 compliance officer or community liaison to both monitor
15 and participate in police training and training
16 development.

17 I urge you to reject the settlement agreement
18 and pursue additional investigations into Portland
19 Police's conduct as well as further negotiation into the
20 development of these agreements for the sake of the
21 well-being of the Portland community as a whole.

22 Thank you very much for your time and the chance
23 to speak on these issues.

24 THE COURT: Thank you very much.

25 MS. JAMA: Good afternoon, Judge Simon. For the

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1 record, my name is Kayse Jama. I am the
2 executive director of the Center for Intercultural
3 Organizing.

4 THE COURT: How do you spell your name,
5 Mr. Jama?

6 MR. JAMA: My first name is Kayse, K-A-Y-S-E;
7 last is Jama, J-A-M-A.

8 THE COURT: Thank you, sir.

9 MR. JAMA: The Center for Intercultural
10 Organizing is a grassroots organization working to build a
11 multi-racial, multi-ethnic movement for immigrant and
12 refugee rights. Before I start my testimony, I want to
13 thank all the parties involved in this matter for their
14 hard work and negotiation.

15 To start, let me tell you that our organization
16 has been working with issues of police accountability and
17 community trust for the past ten years under four
18 different administrations, including the current
19 administration. As I told City Council in my December
20 testimony for the changes to the Independent Police Review
21 Board, I have come to the conclusion that our wonderful
22 City of Roses and its elected leaders are unable or
23 unwilling to hold Portland Police Bureau accountable. Any
24 meaningful reform that has been proposed either ends up
25 completely flushed down the toilet or significantly

1 watered down.

2 Your Honor, we are unable to police our police
3 force. Even after this agreement was signed, our Portland
4 Police Bureau has been actively engaging in its pattern of
5 resisting any policy change that might improve
6 police-community relations or raises the bar for police
7 accountability.

8 To give you an example: During the last year's
9 police contract negotiations, the Portland Police union
10 used the proposed settlement agreement as a central point
11 for their opposition to the City. The resistance that we
12 witness to any positive change for Portland Police Bureau
13 and the City's inability or unwillingness to force change
14 makes extremely skeptical about its effectiveness and the
15 fairness of this agreement and its inadequate
16 implementation.

17 Therefore, Your Honor, unless two things happen,
18 I consider this agreement insufficient and short of
19 community's expectation of having accountable police
20 department. First, we must revisit this agreement and
21 make some substantial changes that will remedy the
22 community's concerns. Secondly, we have to establish
23 historical mechanisms of accountability about its
24 enforcement and implementation. We also need to give a
25 sufficient power to those we asked to be enforcing

1 personnel and include the Albina Ministerial Alliance as
2 part of the enforcement.

3 Let me go over a few of the points that we need
4 to negotiate.

5 First, compliance officer. The new position
6 Compliance Officer/Community Liaison is created to oversee
7 implementation of the settlement agreement but has no
8 power before the federal court to recommend changes to the
9 agreement, nor to ensure the City's compliance. The
10 Albina Ministerial Alliance has already demonstrated that
11 it has capacity and expertise to monitor the Portland
12 Police Bureau, and the courts should offer AMA its
13 backing.

14 Funding for agreement for the payment. The
15 agreement sets aside funding to both improve
16 accountability to the Portland Police and ensure that
17 police are not using force in situations which does not
18 call for it. Unfortunately, the agreement does not direct
19 how this money will be spent. As a result, the City
20 budget roughly allocated \$5 million, public dollars, per
21 year, for a total of \$25 million without clear plan of
22 spending and without consulting the public.

23 THE COURT: So do you think I should disapprove
24 the settlement because it doesn't have a clear plan of how
25 that money is to be spent?

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1 MR. JAMA: Your Honor, it is one of the issue
2 points that we really wanted to raise. So in addition to
3 other points I am going to be making, I said yes.

4 THE COURT: All right. By the way, please try
5 to refrain from repeating points that have been made by
6 others.

7 MR. JAMA: Thank you, Your Honor.

8 Data collection. It has been said also that the
9 Portland Police does not have enough data to back whether
10 racial bias is a factor of this community policing. I
11 encourage and highlight that we have to collect data and
12 also desegregate the data to ensure that we have a clear
13 picture how the Portland Police is policing our community.

14 Language access and Tasers, Your Honor. As
15 written, the agreement poses particular risks to
16 individuals who are not proficient in English when it
17 comes to use force situations. The provision concerning
18 how an officer using an Electronic Control Weapon
19 communicates their intention. For example, does not
20 require the officer to consult an interpreter, but rather
21 to use "nonverbal" cues to explain the situation.

22 This is wholly unacceptable. Even if nonverbal
23 cues were remotely adequate in these circumstances,
24 failing to provide an interpreter for an individual
25 experience mental health crisis is degrading, inhumane,

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1 and violates basics human rights.

2 Your Honor, all of the other points that has
3 been mentioned by my colleagues is one of the issues that
4 we are really concerned about this settlement agreement,
5 its fairness. So we are encouraging that this settlement
6 should be rejected and go to trial. We are hoping that if
7 it goes to trial, there will be an important and strong
8 mechanism of community-police accountability.

9 As I said and highlighted, I want to make sure
10 that our police department is accountable in respecting
11 people's rights, but also that's its job.

12 THE COURT: Let me hear next, please, from
13 Barbara Ross, followed by T.J. Browning, Becky Straus,
14 Calvin Hall, Mike Withey, and Barry Sutton.

15 Mr. Sutton, would you rather go this afternoon
16 or tomorrow morning?

17 MR. SUTTON: Tomorrow morning.

18 THE COURT: Ms. Ross.

19 MS. ROSS: My name is Barbara Ross. R-O-S-S.

20 I am speaking as an individual and not
21 representing any organization. I want to focus on the
22 reasonable person standard, the review, the standard that
23 is used, and it is highlighted in the DOJ agreement, item
24 61, page 16. Three people have already mentioned this as
25 an important issue. I want to give an example of why that

1 is such so destructive and undermines the fairness of the
2 process.

3 The DOJ agreement says that it is supported by
4 the evidence when a reasonable person could make that
5 finding regarding a complaint, in light of the evidence,
6 whether or not the reviewing body agrees with the finding.
7 The representative of the City Attorney's Office explains
8 that at every hearing, and so every complainant hears
9 this, saying: It doesn't matter what you think as a CRC
10 as long as you believe that the person from the police
11 department that is explaining this is a reasonable person.

12 So what this does, it shifts the focus from
13 saying, what is the evidence, what is the preponderance of
14 the evidence, how do you think, to: Is the supervisor,
15 who is explaining the case, is that a reasonable person or
16 not?

17 An example of this is the case of Craig Maynard.
18 He was a person with a lot of mental illness background.
19 He was riding his bicycle downtown after dark, and a
20 police officer noticed that he didn't have a reflector on
21 the back of his bicycle and so took off after him.

22 Craig ran a red light trying to evade the
23 officer, but he did stop. The officer got out and talked
24 with him, and there was an exchange ensued. The officer
25 took him to the ground and in the process broke his arm.

1 This story ends tragically. I don't believe it was the
2 officer's fault, but his mental health situation
3 deteriorated rapidly after that, and he ended up
4 committing suicide.

5 At that hearing, the commander who was defending
6 his officer, he looked like a competent person. He was
7 articulate, and he explained that, yes, this was all
8 justified because this person might have been a really bad
9 criminal, and by stopping people with minor complaints, we
10 often find really bad criminals.

11 Well, he sounded reasonable, and the committee
12 was clearly disturbed. But again, the representative of
13 the City Attorney's Office said: It doesn't matter what
14 you think. If you believe a reasonable person could have
15 come to this conclusion, then you have to side with the
16 police department.

17 This undermines the sense of fairness of the
18 person making the complaint. It undermines their sense of
19 fairness about what is going on, and it doesn't allow the
20 CRC to take an objective, balanced view of what was going
21 on.

22 In my testimony I have laid out six instances in
23 which this problem has been forcefully brought to the
24 Mayor and the City Council's attention, and no action has
25 been taken.

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1 In his introduction the judge said that by
2 September 11th the parties involved could make changes
3 that they agreed to. So I think it is very important that
4 the City Council ask the DOJ if they can delete this item
5 requiring the reasonable person standard of review from
6 the agreement so that the City Council and the parties
7 involved can come to a less differential standard of
8 review, because I think it is very unfortunate if the
9 complainant feels that it doesn't matter what the CRC
10 remembers. It doesn't matter what they think as long as
11 they believe that the police officer -- the commander or
12 the supervisor, who is making the explanation, if he is a
13 reasonable person.

14 THE COURT: By the way, if I said
15 September 11th, I misspoke. I meant March 11.

16 MS. ROSS: I'm sorry. I am wrong. I apologize.
17 Thank you for correcting that.

18 So I would urge the City to look back at those
19 six instances, and there are probably more when other
20 people really objected to that and said that this is not a
21 good way. We need a fair, balanced process for the CRC.
22 If people are going to have confidence in them, then we
23 need to believe they are exercising balance and
24 independent judgment and not just rubber stamping what the
25 commander or supervisor brings forth.

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1 I thank you for the opportunity to testify.
2 This has been a tremendous hearing. I really appreciate
3 all the parties who have participated. Thank you very
4 much.

5 THE COURT: Thank you very much, Ms. Ross. I
6 appreciate it.

7 I would like to hear next from T.J. Browning.

8 MS. BROWNING: Good afternoon. I am T.J. --
9 Teresa Jean -- Browning. B-R-O-W-N-I-N-G. I usually
10 follow up like the poet, but for some reason it seems more
11 appropriate to say like the gun.

12 So I come from a background of over 20 years of
13 advocacy on police accountability and, frankly,
14 professional police forces. I served on the same
15 committee as Dan when Mayor Katz asked us to look at
16 police accountability in 2000. I was on the committee
17 that looked at the ordinance, and I was on the first CRC.
18 I am currently an APA with the CRC. I advocate for
19 complainants.

20 But unlike some of the people that I have had
21 the pleasure of working with, I have also tried to educate
22 myself on the other side of the spectrum. So I have
23 volunteered numerous times for the oral boards, the hiring
24 process for the police, the promotion process, Chief's
25 Forum, and I was a member of the Bureau Advisory Committee

1 for seven years, chairing it the last three years until
2 Chief Reese disbanded it.

3 So, Your Honor, I was actually going to talk
4 about reasonable person and 21 days, but I'm not going to
5 do that.

6 THE COURT: Thank you. I have reasonable person
7 and 21 days on several places on my notes already.

8 MS. BROWNING: Goody. But there is just one
9 comment on the reasonable person, and for some reason I am
10 feeling you might understand it.

11 When you sit on the CRC, and you have a citizen
12 coming before you seeking justice and seeking fairness and
13 an adequate resolution to their grievance, and you are
14 hindered from producing that outcome by the letter of the
15 law, at best, you are embarrassed. If you are really
16 honest with yourself, you are ashamed. I think this
17 accounts for quite a bit of the turnover in the CRC. I
18 will leave it at that.

19 The 21 days to resolve an appeal, it has been
20 addressed. But what I wasn't able to find anywhere in the
21 settlement is what happens if we don't meet that 21 days?
22 Does it just go away? Is there a free walk? Does a
23 citizen have no ability to extend that?

24 Your Honor, it is not 21 days. It is actually
25 15 for those of us who need to go downtown, unless, of

1 course, there is a snowstorm or holiday, then you are
2 looking at 12 or 10. That's unreasonable and contributes.

3 You know, I actually read the DOJ's work and all
4 of their findings. Man, my heart, after 20 years in this
5 arena, just exploded with hope and joy. Oh my gosh. They
6 got it. I mean, they were addressing all the problems.
7 They were identifying the issues. I was so excited. I
8 can't believe this. We are actually going to have
9 something happen here in this arena.

10 And then I read the settlement agreement, and
11 all those hopes were dashed upon the cruel rocks of
12 reality. How, with clear conscience a professional
13 organization can identify all of these issues and not
14 address them, was a mystery to me, until I sat this
15 morning for the two-hour presentation of the two DOJ at
16 our citizen fairness meeting and heard why we didn't need
17 to address all these issues.

18 I didn't record them, so I'm probably not
19 recording accurately. But I am hoping I got the gist.

20 "It takes time for change.

21 "The police culture needs to go through a
22 change.

23 "If the police force doesn't buy into this, it
24 isn't going to happen."

25 Here is my favorite. "You know, Chief Reese has

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1 made so many of these changes without being asked to, we
2 have confidence in his ability to reform."

3 All right. Over a decade ago, the first CRC
4 requested the permission to look into a policy of
5 de-escalation. We were denied. Over a decade ago, the
6 first CRC asked for it to be a policy when we found out in
7 the files that a certain group of people were being called
8 "mentals," because we thought that was dehumanizing. Over
9 a decade ago. It doesn't take time to make change. It
10 takes political will.

11 Anybody who thinks that this chief who was there
12 long before the DOJ got involved and didn't do any kind of
13 reforms, until the threat of the full weight of the
14 federal government was hanging over his head, well, now,
15 suddenly, voluntarily, since he has taking these steps,
16 continued to address all of these things in the findings,
17 I would like some of their drugs.

18 Status quo and inertia, Your Honor, are so easy.
19 Change is hard. Change is only going to come if somebody
20 bigger and stronger makes it happen. This is not fair,
21 this is not reasonable, and this is woefully inadequate to
22 build trust in this community.

23 Please -- I disagree with Mr. Handelman. I hope
24 you don't have to go through all of this and fix it,
25 because you will be there forever, and we see any change

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1 for at least another decade. But if you just reject it,
2 they will be forced to go back to the table.

3 Please.

4 THE COURT: Thank you very much, Ms. Browning.

5 I would like to hear from Becky Straus, followed
6 by Calvin Hall and Mike Withey.

7 MS. STRAUS: Good afternoon. Becky Straus.
8 S-T-R-A-U-S.

9 Your Honor, to the parties and to the community
10 members, and I particularly want to acknowledge those who
11 have really exhibited such bravery by bringing forth their
12 personal stories today. Thank you for that.

13 My name is Becky Straus. I am the legislative
14 director of the ACLU of Oregon, the American Civil
15 Liberties Union.

16 Thank you for the opportunity to testify and
17 also, Your Honor, of your thorough review of the written
18 materials that allows me to hit on the high points and not
19 repeat it or read it out loud.

20 We have heard a lot of testimony today about the
21 shortcomings of the agreement. I also don't want to hit
22 on those. I've raised a couple of those issues in our
23 written testimony and agree with many of the things that
24 have been said already today in that regard.

25 THE COURT: Well, with respect to the two points

1 you've raised in your written materials, one is that you
2 asked that the Court clarify that the AMA Coalition have
3 additional authority to ensure compliance. I understand
4 what you are saying there.

5 The second point, though, you have asked the
6 Court to provide clear guidance to the parties regarding
7 the Court's expectations as to what will constitute
8 compliance. If you could spell that out a little bit
9 more, I would be interested in understanding better what
10 you are referring to.

11 MS. STRAUS: Absolutely. Thank you, Your Honor.
12 The objectives of the recommendations and the written
13 testimony is to try to respect the Court's authority to
14 disprove or approve wholesale, and so we have tried to
15 come up with some ways to creatively address that -- some
16 of the shortcomings.

17 In regard to the second point you've mentioned,
18 I think what we are looking for is a little more clarity
19 in terms of what "substantial compliance" means. My read
20 of the settlement agreement, as it talks about minor or
21 occasional violations not being "substantial
22 non-compliance," whereas systemic violations are
23 substantially non-compliant.

24 I realize that in this sort of nature there are
25 going to be a lot of things that are open to

1 interpretation, and I think that's in part where our first
2 recommendation comes into play, that the community have a
3 seat at that table to engage in that discussion about what
4 those terms mean.

5 I would also add, though, sitting here today,
6 listening to all the testimony, I think there is an add-on
7 to our second request or recommendation, and that be, to
8 the extent that there is your authority to spell this out,
9 some guidance for the community and to the parties in
10 terms of what approval of the agreement would mean in
11 terms of possibility for future change during the pendency
12 of the agreement. We are talking about whether it is 2017
13 or whatever our scope of five years might be.

14 There is a lot of concern about the shortcomings
15 of the system for officer accountability, and I think we
16 hear some of the fear today in testimony that codifying in
17 the settlement agreement a standard of review for the CRC
18 that many people are very uncomfortable with, what does
19 that mean for the City's ability, the public's ability to
20 move forward with those kind of changes that may still be
21 needed if this settlement agreement is in place?

22 So anything that Your Honor may feel appropriate
23 to provide guidance in terms of what the settlement
24 agreement does or does not do, should you approve it,
25 would be helpful. Those are our recommendations.

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1 That is my testimony. I thank you for
2 listening.

3 THE COURT: Thank you very much, Ms. Straus.
4 Thank you for the good work that your organization does.

5 MS. STRAUS: Thank you.

6 THE COURT: I would like to hear from Calvin
7 Hall. Good afternoon, Mr. Hall.

8 MR. HALL: Good afternoon, Your Honor,
9 United States Justice Department, Albina Ministerial
10 Alliance representatives, police union and the City
11 Attorney's Office.

12 Your Honor, I have edited my text per your
13 request to eliminate redundancy.

14 Your Honor, my name is Calvin Hall, public
15 advocate for the York Institute. I have four points to
16 make, but first I would like to take a moment and point
17 out yesterday's article in yesterday's Oregonian where our
18 city auditor stated that the City Council could have
19 addressed these issues, and had the City Council
20 demonstrated courage, we wouldn't be sitting here in your
21 chambers today.

22 When our elected officials failed to exercise
23 courage and make decisions that balance community interest
24 and government interest, their lack of actions adversely
25 impact the systems put in place by our founders. When

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1 this happens, only the Court can establish the rule for
2 living together.

3 My four points: No. 1, communication. I echo
4 the comments of others that AMA and the compliance officer
5 should report directly to you, Your Honor. Stare decisis
6 is my position. Yesterday's decision shall guide today's
7 decisions. In context to this historic moment, it is
8 today's decision that will guide tomorrow.

9 Our founding fathers knew that an elected body
10 could regulate a system. The abatement of responsibility,
11 Your Honor, then suggests that the only way to regain that
12 alignment is to have those who have demonstrated courage
13 report directly to the person that has the regulatory
14 gavel.

15 The second component is the settlement
16 agreement. Your Honor, Granddaddy would say, "You can't
17 snow the snowman." \$25 million going to a bureaucracy
18 that is void of emotion? Most of the citizens are still
19 trying to figure out their water rates and the
20 million-dollar house built with water money. I suggest
21 that you identify a way to corral that money and give
22 \$10 million or more to the community organizations that
23 have been working for free for decades to ensure that
24 justice, fairness, and equality.

25 Secondly, being black doesn't mean justice. I

1 hope you send a message to the Office of Equity Director,
2 as well as to the IPR director, that they are the only
3 black men in this room making over \$100,000, and they
4 should be sitting here with the rest of the citizens
5 pulling strategies for appropriate policy prescriptions.

6 The second component is this: I would hope,
7 Your Honor, you would consider placing in, with strong
8 teeth, Articles of the Civil Rights Act, 50 and 51. The
9 reason for that is because, like an iceberg, you can see
10 the attack coming from the top, but it is the iceberg
11 that's underneath the water that's long and deep --
12 manufactured, covert investigations of folks who have
13 demonstrated courage to stand up for justice. By putting
14 in 50 and 51, it would ensure that defamation, libel, and
15 slander are not used against those folks who stand up for
16 right.

17 I would like to quote James Madison. James
18 Madison stated, "All societies are made up of warring
19 factions. Rich against poor. Religion against religion.
20 Race against race. A small republic too often falls prey
21 to one of those factions, with the result being
22 lawlessness and oppression, especially against the
23 minority.

24 "It is only in a large republic, with the
25 different-minded people, that one faction can't gain

1 control in such a republic. If this republic was
2 dedicated to justice of the spirit of a representative
3 bureaucracy, then can we see our society exist in a fair
4 and justice society."

5 United States Justice Brennan stated, "Such
6 efforts of the federal court are to determine boundaries,
7 with the goal to protect basic rights from tyranny. The
8 middle has to be filled up by the democratic process.
9 That's the job of the citizens."

10 In conclusion, this historic agreement in place
11 says to me that there has been only one perfect law and
12 policy that was created in this world. It was carved out
13 of stone on top of a mountaintop. When it was done, it
14 was called the Ten Commandments. Everything else written
15 to govern human actions has needed to be reviewed, changed
16 and/or debated in order to create shared communities. Our
17 founders clearly represented this fact. While they wrote
18 the Constitution, they also had slaves.

19 All systems need regulatory oversight. Put the
20 AMA and put the compliance position underneath you, sir,
21 because our elected officials abated their responsibility.
22 Oregon municipal law gives them the authority to develop
23 policy and regulatory procedures to set these pieces in
24 place. But whether it was abatement, whether it was a
25 lack of political will or courage, they chose to put their

1 head in the sand and kick the football here.

2 Sir, get us a touchdown.

3 THE COURT: Thank you very much, Mr. Hall.

4 In a moment I would like to hear from Mike
5 Withey. Let you know who is coming up. Is Madeline
6 Lawrence here? No.

7 Barbara Baker. All right. Barbara Baker will
8 be coming up.

9 Is Jan Friedman here?

10 So we will do Madeline Lawrence, Barbara Baker,
11 Jan Friedman, if she is here.

12 Daniel Chevalier. Are you here? No.

13 Then Joe Walsh, Greg Kafoury, Jose Serrica, and
14 Francis O'Halloran, and we will talk more about where we
15 are then.

16 All right. Mr. Withey.

17 I understand that there is a request by some
18 folks here wanting to know if you are coming up in the
19 list, if you just can come back tomorrow morning. The
20 answer is yes. We will probably keep going until about
21 5:30 or so, take our last witness or two at 5:30, and then
22 start up again tomorrow at 8:30.

23 If you can come back tomorrow morning, and you
24 would like to leave now and want to do that, just let the
25 folks know at the desk outside that you are leaving now,

1 and you will come back and hopefully hear your testimony
2 starting at 8:30 in the morning. That's up to you. We
3 will do the best we can.

4 Thank you, Withey.

5 MR. WITHEY: Thank you, Your Honor. Withey,
6 W-I-T-H-E-Y.

7 So I wore this backpack as sort of a visual for
8 you guys, especially you two. I had no experience with
9 the internal police review until just recently, about
10 between months ago. Even though I have passed out many
11 forms for people to fill out that I have watched being
12 abused by the police, I have never had the occasion where
13 I personally became a victim until about two months ago.

14 I was serving salads and water to homeless
15 people underneath the 405. I am a homeless advocate.
16 While I was there, I was with a friend of mine, and we
17 returned to another friend of mine who was staying in a
18 tent. All of a sudden, a police officer comes the wrong
19 way down the road and stops by us and asks me for my ID.

20 I said: Well, why would you ask me for my ID?

21 He said: Well, you have a backpack on. This
22 backpack.

23 He said: You have a backpack on. You are right
24 here near homeless people; you must be homeless.

25 I said: Well, even if I was homeless, would

1 that allow you just to stop me and demand that you take my
2 ID?

3 I said: No, that's not going to work.

4 So about three times later, when he finally got
5 the idea that I was not going to show him my ID, he jumped
6 out his car. He ran to me, he got this far into my face,
7 and spit on me while he demanded my ID again. I told him
8 no.

9 Now, that brought up a very interesting thing to
10 me, because I had watched it happen before, and it never
11 clicked in my head. What he did was, he rushed up on me
12 so that I would go like this (indicating). He spit in my
13 face so I would become defensive, and at that point he
14 could take me down and bring me to jail and charge me for
15 assault.

16 So I went to the IPR, and I said: Listen, here
17 are my witnesses. Let's talk. We talked.

18 I got a call about three weeks later from his
19 sergeant, saying -- well, he was more like a defense
20 attorney than anything else, and he was demanding that I
21 must have said something, or that I must have gotten away.
22 I'm like: No, this isn't my side of the story. Quit
23 calling it my side of the story. This is what happened.
24 This is what happened. It is not my side.

25 So what I'm saying is, in essence, my experience

1 with the IPR was terrible. I went down there. I brought
2 the witnesses. We went through everything. I said: All
3 I really want is for this officer to be retrained, to not
4 go try to arrest people, because that's what he was trying
5 to do to me.

6 I'm not stupid. I have seen it before. I
7 didn't fall for it. If I had, I might still be in jail.
8 I said: I want him to be retrained. I want him to go to
9 a special eight-hour class on how not to be abusive to
10 people.

11 That's all I wanted. Like I said, his boss
12 called about three weeks later. I said: I know you are
13 his sergeant. Remember, I know. You we know each other
14 from being downtown. I know who you are, and I know you
15 train him. So it is kind of crazy that you would be
16 investigating the guy you trained on how to do it. This
17 makes no sense to me.

18 So I got a letter a few days ago. It was from
19 the review committee. They stated that basically he
20 admits that he should be more respectful in public, and so
21 that's it. That's the end of it.

22 So I took the letter in. And I said: You know,
23 this isn't right. This isn't right. If I were to spit in
24 his face, irregardless of whether it was an accident or
25 not, he would have took me down. If I would have went

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1 like this, because he had rushed on me -- mad -- I would
2 have went down; I would have got a felony.

3 So how is that he gets, maybe even a reprimand,
4 and all he has got to do is admit he has to be more
5 respectful. This is absolutely not going to work. It is
6 not going to work.

7 So are we going to continue to let the police --
8 you know, to be honest, I hate to give analogies. But
9 that's sort of like letting the fox design, build, and
10 then stock the chicken coop. It is ridiculous.

11 And it is up to you. We count on the Department
12 of Justice. We need you guys. Do not allow them to
13 continue with decades of this behavior. This behavior is
14 unacceptable, and now it is on you.

15 THE COURT: So then what do you recommend? What
16 will work?

17 MR. WITHEY: I recommend a police review from
18 the citizenry that have teeth; that can say: No, that's
19 not right, and we're going to remove you from office. We
20 are going to remove you from office, because you are not
21 listening to the people.

22 The people matter. It is not about what
23 Chief Reese wants or what the Mayor wants or what the
24 Portland Business Alliance wants. It is what is in the
25 Constitution that matters. That's why we have a

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1 Constitution.

2 THE COURT: Let me make sure I understand you.
3 When you say "we can remove you from office," you are not
4 referring to the elected officials, are you? You are
5 referring to the police officers; am I correct?

6 MR. WITHEY: Well, Chief Reese has an office.
7 He should be able to be removed by this independent
8 citizenry board, absolutely.

9 THE COURT: Very good. Thank you very much,
10 Mr. Withey. I appreciate your testimony.

11 All right. Is Madeline Lawrence here?

12 MS. LAWRENCE: Yes.

13 THE COURT: Then Barbara Baker. Are you here?
14 You will be next. You will be followed by Jan Friedman.
15 Are you here? All right. Very good.

16 Followed by Dan Chevalier, Joe Walsh, Greg
17 Kafoury, Jose Serrica, Francis O'Halloran.

18 Ms. Lawrence, welcome.

19 MS. LAWRENCE: Hi. Thank you for having me. My
20 name is spelled L-A-W-R-E-N-C-E.

21 I want to say, first of all, that I think the
22 fact that we are speaking today about how Portland Police
23 treat the mentally ill instead of racialized brutality, to
24 me, it speaks to the failure of our institutions on a
25 federal level; to me, it feels like the Department of

Justice is guilty either of negligence or moral cowardness. I know we are here to talk about mental illness. I just wanted to get that on record.

My name is Madeline Lawrence. I am a life-long resident of Portland, as is my brother, who has a serious mental illness. My brother, like many others, is not a poster child for mental illness. He smokes a lot, and he likes to watch YouTube videos about space aliens. His perceptual input is very, very different from yours and mine. Often other people find his responses confusing and frightening.

Sometimes, even those who know and love him best, don't know how to respond or proceed. At times, my brother has needed help beyond the capacity of his friends and his family to provide. In many of those moments, I and my family have retrained from calling for the help we have desperately needed out of a reasonable fear for the safety of my brother. We all know that, in Portland, when calling for help with a mental health crisis, the first responders are trained to respond with drawn guns. They escalate; they don't de-escalate.

When I first read of the Justice Department's suit against the City, I was shocked that the issue of race was not part of the conversation, but because of my love and concern for my brother, I still hope that this

suit could lead to a positive change in our city's police force.

It was this hope that led me to call the new Mobile Crisis Unit. Because of what I read in the paper, I gave my very paranoid, very private brother's name and address and mental health history to these professionals because I hoped they would be a buffer between him and the police and that they might save his life.

I did not know that this unit had hired Officer Burton, one of the officers who participated in the violent death of James Chasse. Perhaps Officer Burton is seeking some sort of absolution. If he were to say this in public, I would not disagree with him. But I do not believe that one should be paid to do penance, nor do I believe that the most vulnerable of our city's citizens should be instruments in that person's penance.

By hiring this officer, the institutions of my city are telling me that giving this officer and others like him yet another chance to do a good job is more important than my brother's life or safety or self-respect. I have no faith in this agreement, and these are my reasons.

Thank you.

THE COURT: Thank you very much, Ms. Lawrence.

Ms. Baker.

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MS. BAKER: Thank you. I have a visual.

Before I start, I want to thank you, Judge Simon, for allowing me to testify, even though I submitted recorded testimony. After listening to the testimony this morning, I was convinced that these people here and the general public need to know why I'm here today.

My name is Barbara Baker. I am here to share a personal story addressing the areas of the agreement that I believe are inadequate, specifically regarding use of force and where the agreement retains and expands loopholes for excessive Taser use, including prohibition of the use of Tasers, to threaten or intimidate when no threat exists.

THE COURT: One minute, Ms. Baker.

Mary, if you can move the photograph up a little bit.

There are three red lines underneath there that also are relevant to Ms. Baker's story. See, I did watch the video. There you go.

MS. BAKER: I am also addressing the section regarding officer accountability.

I have come to the same conclusion as the AMA and Consult Hardesty, that the agreement has a long way to go to achieve its purported goal of ending excessive force

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by police and improving accountability and creating community trust.

My story starts ten years back, just outside of Portland to be specific, but the scenario is all too common, and my memory is still very fresh. I moved to the area in 2004 and made an RV my home. In November, a friend, called 911 because of a misunderstood comment. He thought that possibly I was going to commit suicide. I made efforts to call him back, but it was too late. Within minutes, the Fairview Police, county sheriff, and fire department surrounded my home, flashing lights in my windows, and taking a crowbar to my door, as I frantically yelled that I was all right and getting a shirt on to cover my naked body.

As I opened the door, they had already damaged the latch, and I had to tap the bottom of the screen door with my foot to get it open. As soon as it opened, I positioned myself in the door, standing just inside, legs apart, arms at side, palms facing forward to indicate that I was not a threat to anybody, including myself. See the red line at the top.

I looked down the steps that were at least three feet out and below into the darkness of what appeared to be three people. In a matter of seconds, I saw a square object pointed at me. Without warning, I was falling

backwards, tasered, wires thrust into my side and in my wrists.

Immediately, I was handcuffed and taken outside barefoot and half-clothed to be transported to the hospital. I requested a copy of the police report where I discovered that the officer who tasered me detailed an outright lie to which I had no witness to account for what happened.

As verbatim from his report, "As myself, Officer Pemberton, and Deputies Brightbill, Jones, and Steiner attempted to open the screen door, Ms. Baker was attempting to keep it closed and was attempting to kick at officers through the screen. As the screen door was opened, Ms. Baker again tried to kick at officers, and I deployed my Taser, after yelling 'Taser' so that the other officers knew I would be deploying my Taser.

"I fired my Taser, striking Ms. Baker in the left upper thigh. Ms. Baker immediately fell backwards onto the floor, taken into custody. I then explained to Ms. Baker that we had an obligation to check on her after she states she wants to hurt herself. Ms. Baker told medical personnel on scene that she had taken an amount over her prescribed dosage of medication."

Any investigation of the scene and hospital report would have proven this outright lie. As you can

see by the three marks that show where the officers stood, there was no way that I could have held the screen door, kicked through the metal crossbars, or kicked at anyone at the bottom of the narrow stairs several feet below.

In addition, medical staff soon determined that clearly I had not taken too much medication, and I posed no threat to myself, and I was released.

I met with the Fairview chief of police, asking him for an investigation, and he refused. Instead, he dismissed me, stating that had he been there, not only would he have tasered me, he would have taken me to jail and not to a hospital. He then threatened me, saying it was in my best interest to immediately drop the issue and demanded that I leave his office.

In 2007, I had moved to the city of Portland, inside the city limits. Just before my 56th birthday, as I slept, a 27-year-old neighbor broke into my apartment and raped me. Even though the rape left no physical scars, the emotional ones have endured.

But I didn't call the police, and many people have questioned why. I didn't, because, as I sat there alone in the dark, I recall that night in 2004, which was equally horrendous. How could I risk another assault on my being? As just like a rape victim, it was my word against the police in the case of being tasered.

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I no longer trusted that a 911 call would result in the police coming to protect me, but instead, might lead to further injury and terror. I have had other occasions when a call to the police was necessary. However, they're always made now with hesitation and fear.

In the ten years I have lived in Portland, I have seen a steady increase in the use of force by police in the case of those in or potentially in a mental health crisis and those of color.

As I read the agreement, I find it rife with loopholes and allowances, not ensuring my safety, but instead, indicating cause for apprehension should I need to call for the aid of police only to be risk being confronted with injuries and possibly even death.

Thank you.

THE COURT: Thank you very much, Ms. Baker.

I would like to hear from Jan Friedman from Disability Rights Oregon.

By the way, I think the rest of today, I would really appreciate that everyone limits their comments to five minutes. We will limit you with the yellow and red signage.

Ms. Friedman, I did receive and thoroughly read your written comments dated January 31st, 2014. I thank you for that, and I look forward to hearing your comments.

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MS. FRIEDMAN: Thank you, Your Honor. Thank you for hosting this fairness hearing, and I really have been impressed by all the testimony, the individual testimony of the people who have come forward with personal stories and the different organizations, and, of course, this is a huge issue. We are all interested in and care about ourselves and our neighbors.

I'm an attorney with Disability Rights Oregon, and we have been doing advocacy and representation of people with mental illness since the -- well, for a long time, for many years.

We have done class actions. We do legislative change. We do individual representation. And our client is always the person with the disability, and we are always motivated by what it is that they want. So we don't act unless they are entrusted in our taking action.

We have been involved with the Portland Police Bureau also. We have been part of the team to bring the crisis intervention training back to Portland. We have been on the advisory committee of the Crisis Intervention Team and are now a member of the Behavioral Health Unit Advisory Committee.

We welcome USDOJ's intervention, and we support the settlement agreement. We appreciate all the work that has gone into this agreement so far, and, we, of course,

1 do not feel that it is perfect. We do feel like there is
2 room for improvement; that it is a step in the right
3 direction.

4 We believe that the settlement agreement could
5 be strengthened to ensure that it is fair to all affected
6 and that it is reasonable and that it is adequate to solve
7 the problems identified in the complaint.

8 I'll try not repeat what other people have said.
9 It is going to be a little tricky. We believe there
10 should be a clear line of oversight. The Portland Police
11 Bureau must understand that if it is promulgating
12 directives about use of force, they need to be within the
13 spirit of the settlement agreement.

14 They can't leave out that if you have a fair
15 amount of training, then you should get to the point where
16 you can resolve issues with no force. That's important to
17 include.

18 They can't leave out important aspects that
19 actually restrict force and get to the problem -- one of
20 the problems that brings us here today. It is very
21 important that there be somebody, either you, Your Honor,
22 or the DOJ, or somebody, who is looking at those
23 directives and saying: Whoa, you just missed the whole
24 spirit; you are going to have to redo these, or you missed
25 some aspect; you are going to have to redo these.

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1 is happening.

2 We believe that the Albina Ministerial Alliance,
3 and we are a member of the Albina Ministerial Alliance,
4 but I don't speak on behalf of them. I am only speaking
5 on behalf of Disability Rights Oregon. We recommend that
6 they continue to have a strong role in this agreement and
7 compliance with this agreement, and they are a voice of
8 the community.

9 We believe that there needs to be more
10 transparency. As part of the Behavior Health Unit
11 Advisory Committee, there needs to be a way for the
12 community to be on every part of that -- on the
13 curriculum, on the training, on after the training. They
14 should know, because they are the ones who have the
15 information for us so we can actually improve the training
16 for the Portland Police Bureau.

17 So we can't be shutting them out. We have got
18 to invite them in and use what we can learn. Also, we
19 have a trust problem, and it doesn't help at all to say:
20 Oh, we are doing what we're doing, but we are not going to
21 tell you about it until this stage way over here. Now,
22 you get to hear about it. That's a problem.

23 So I appreciate the opportunity to speak here
24 today. And again, I think it is a good settlement
25 agreement, but it definitely could have some improvements,

1 Secondly, in terms of Taser use, and the woman
2 before me identified the issue strongly. Tasers are a
3 serious weapon. They cause harm, and they can cause
4 death. They should only be used in the most restrictive
5 way, and the settlement agreement makes an effort to
6 restrict Taser use, but doesn't restrict it enough,
7 because there are big exceptions.

8 So in terms of giving a warning, there is an
9 exception to that, if it looks like there may be danger to
10 the officer or to somebody else. It shouldn't just be
11 written that you give a warning to somebody before you set
12 off a Taser, because if you give that warning, that person
13 might just do whatever it is you want them to do. They
14 might move to the right. They might lay down. They might
15 put their hands up. They might do whatever, and then
16 there is no Taser being used. So it is very important
17 that those be set guidelines on Taser use.

18 There has been a lot of the talk about the IPR.
19 It is not independent. We have had concerns about this
20 for years. It is police monitoring police. Every time
21 you get the Internal Affairs Division involved in every
22 aspect of what's going on with an investigation, you have
23 police looking at police, and you don't have independence.
24 If you don't have independence, it is not fair to our
25 citizens, because nothing is happening. Nothing different

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1 and I hope those are worked on before March. I hope all
2 the parties are able to do that.

3 THE COURT: Very good. Thank you, Ms. Friedman.

4 Is Daniel Chevalier here? Okay. If he comes
5 later, we will put him in later or tomorrow.

6 Let me invite up Joe Walsh, Greg Kafoury,
7 Jose Serrica and Individuals for Justice.

8 I would ask you to limit your comments to five
9 minutes per person. I have received your written
10 materials, and I have read them.

11 MR. WALSH: My name is Joe Walsh. W-A-L-S-H.

12 Let me say this very clearly: I am totally
13 against this settlement. This settlement, if you reject
14 it, you could list your reasons for rejection, and these
15 smart lawyers can all figure out what's wrong and fix it.

16 If you accept this, it is my understanding
17 that's it. That's the agreement, and we are going to be
18 back here, or maybe you'll be back here in a few years,
19 and we will be doing it all again, because what you are
20 working with is a rogue police department. Unless you
21 understand that, you don't understand what the people from
22 the streets are saying: Our police department is a rogue
23 police department. They don't care about the
24 Constitution.

25 I am an activist. I deal with policemen all the

time, and some of them are really good guys. And some of them could care less. Recently I had one of them say to me: Sure, take my card. They are not going to do a damn thing to me, and they didn't.

Did I file a complaint? Yes, I did. Did they do anything? No. You know what my complaint was? That the man was waking up a homeless guy by kicking him -- six o'clock in the morning -- kicking him. This is a rogue police department, Your Honor.

They steal stuff from the homeless. They steal their tents. They steal their sleeping bags. Dozens of organizations, including ours, go out every week and try to get them gloves and sleeping bags and blankets, and then the cops steal them. They put them in storage, when the people can't get to them. And they don't give them a receipt.

This is what you are dealing with. You are dealing with the City that the auditor a few days ago at the City Club said she can't get to pay attention to the police department. She can't get them to do it. The independent auditor that you asked about, that's her words, not mine.

THE COURT: I heard the testimony on the radio; I wasn't there in person.

THE WITNESS: So let me say again, in case you

missed it: This is a bad agreement.

And when you go back, and you leave Portland, you are going to be sorry about this agreement.

And the City, you could have done so much more, but you don't. You are under the gun here. You want this thing settled, so you do good things, and you say nice things, and then what you do is the sweeps.

The sweeps, Your Honor, is when they come in, and they clean out a whole encampment of the homeless under the Burnside Bridge and other places, violate their constitutional rights, and they know it. And they don't care. They don't care.

That's what you are dealing with. You are dealing with a city that doesn't give a damn, rogue police officers, and a Department of Justice that just wants a settlement. That's what you are dealing with.

If you say no, you will be, as I wrote, another John Sirica. You will say: No, there is more here. And as he knocked out 19 top officials, including the Attorney General of the United States and sent them all to prison and ran the President out of office, you could be John Sirica II.

Thank you.

THE COURT: By the way, I will tell you, in 1981, Judge Sirica swore me in as a member of the Bar, so

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I know Judge Sirica.

MR. WALSH: One of my heros.

THE COURT: Thank you, Mr. Walsh. I appreciate your comments.

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(Section 6, Court Reporter Jill Erwin.)

THE COURT: Mr. Kafoury, let me also let you know that I did receive over the weekend and I've read the two trial transcripts that you sent me from the Wilson case. One, I think, contained testimony from Chief Reese, the other from Assistant Attorney Woboril. You highlighted certain portions, so I didn't have to read the whole thing. I appreciate that. I did read the underlined portions.

MR. KAFOURY: I'll try not to repeat myself, Your Honor.

THE COURT: Please spell your last name.

MR. KAFOURY: K-A-F-O-U-R-Y.

For myself, I would like to say that the largest issue is not successfully addressed in this proposed settlement, and that is impunity. Our law firm sues the City for police conduct a lot, and we have received a number of verdicts. Assault, battery, false arrest, malicious prosecution. These are all intentional torts. It's not easy to win civil cases against the Portland Police Department. You need pretty good evidence to do it.

And what -- what we see is that when officers' conduct is found to be wanton by a jury after a fair trial, the City writes a check, and that's the end of it.

1 The officers are not further questioned. They are not
2 disciplined. Nothing happens.

3 And as one of them said, when he was abusing one
4 of my female clients, he said, "Go ahead and sue me." He
5 said, "It's not my money."

6 There is a practice that -- a culture that
7 emerges from this kind of culture of immunity, and that is
8 that the bad drive out the good. The officers who are
9 abusive and get away with it tend to rise within the
10 system because they are good ole boys and they play by the
11 unwritten rules, and those who don't have a difficult time
12 of it.

13 In a case we recently tried, Kayla Wilson
14 against the City of Portland, within the last month, we
15 had an officer who broke the rule, and that was a man from
16 Gresham, career patrolman, named Jeffrey Durbin, and he
17 testified that he does not believe in the thin blue line.

18 I said, "What is the thin blue line, Officer?"
19 And he said, "Police covering for other officers; lying
20 for other officers." He's in the Gresham Police
21 Department.

22 Extraordinary testimony in a case involving
23 potentially tens of millions of dollars, catastrophic
24 injuries. There is hope out there. There are people out
25 there, but they need support. And when we turn our back

1 on them, we hand control over to those who have forever
2 been in control.

3 When I took the deposition of the former police
4 chief, Rosie Sizer, I asked her to name me an officer who
5 had lost their job for brutalizing a civilian. And in her
6 25 years she said she's never heard of it happening. I
7 said, "How about the 25 years before that?"

8 She said, "As far as I know, I haven't heard of
9 it happening."

10 You should reject this offer, because it's not
11 good enough. On behalf of my firm, Kafoury McDougal, and
12 Individuals for Justice, the Oregon Progressive Party, I
13 do want to point out in reference to the written materials
14 that I submitted to you that in this recent case our
15 expert witnesses were repeatedly challenged by defense
16 counsel who waved the Portland Police policy manual and
17 said, "Do you know the knowledge? Do you have knowledge
18 of the contents of this? This is the rule the officer is
19 supposed to follow. You present yourselves as an expert
20 on police conduct in this case, but do you really know,
21 you from Los Angeles, do you know what's in this book?"

22 Well, that's fair enough. So when the Chief
23 testified and when Mr. Woboril testified, the deputy city
24 attorney, they repeatedly invoked rules which were not
25 written. Even though in the policy manual, it says on

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1 page 1, all policies and all directives are to be readable
2 and accessible.

3 They said, "Well, it doesn't really mean that.
4 We have training which gets updated, which contradicts the
5 written policies. We have policies that everybody
6 understands that -- that contradict these policies."

7 And so if Your Honor is inclined to adopt this
8 agreement, I would suggest that, at a bare minimum, you
9 make sure there are no interpretations of any rules which
10 they may approve which carry authority greater than the
11 rules themselves, that any attempt to change the rules be
12 done only with notice to the public, opportunity to be
13 heard, and with approval by Your Honor.

14 And if that, in and of itself, requires that you
15 say the rules aren't good enough and send them back to the
16 drawing board, that, in and of itself, should be enough to
17 justify a refusal.

18 The larger issue is that it fails to deal with
19 the larger problem. Police investigating police, police
20 culture, which is a closed circle, and those of us who
21 have to live with the results.

22 Thank you very much, Your Honor.

23 THE COURT: Thank you, Mr. Kafoury.

24 And are you Mr. Serrica?

25 MR. SERRICA: Yes. Jose Serrica. No relation

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1 to Judge Sirica.

2 THE COURT: Spelled differently, anyway.

3 MR. SERRICA: Yeah. An extra R.

4 THE COURT: No. He's S-I.

5 MR. SERRICA: I-C-A?

6 THE COURT: Right. Yeah, he's S-I-R-I-C-A.

7 MR. SERRICA: Yeah.

8 THE COURT: Welcome, Mr. Serrica.

9 MR. SERRICA: Thank you very much. I realize a
10 lot of hard work went into this settlement and a lot of
11 testimony here today has exposed a lot of the weaknesses
12 and the kinks in the armor of this thing. And maybe I'll
13 throw out a little bit of background about myself. I've
14 been an advocate for the homeless population for a little
15 bit over 25 years. I was born and raised here in the city
16 of Portland 57 years ago. I've been seeing and watching
17 and living in this city. I know what's going on.

18 My father lived here since 1930. He told me
19 about the corruption that was happening in 1930. He told
20 me these things. I learned these things. I've lived with
21 these things, and I'm also of color. I've also been
22 profiled. I've been followed. I've been harassed. I've
23 been told a lot of various things.

24 But two years ago I got involved in such a way
25 that I -- I started actually falling in love with a lot of

1 the homeless population. I got notice that when I went
2 back to school in '09 and I started working on my degree
3 in psychology, I realized, back then, that in 1970 when
4 they deinstitutionalized the mental health system, that
5 the homeless population is where that is now. And the
6 homeless population is the one that's been getting kicked
7 around and being beaten and having everything stolen and
8 dying just days after having all of their things stolen,
9 like Fred Alvin -- Alvin Smith did four days after being
10 swept out of the encampments up here, that was made --
11 done by ODOT. Four days afterwards, he's left wandering
12 the streets with nothing, and then he was found dead.

13 I actually watched police officers tell a
14 homeless man a -- a -- a veteran, a homeless veteran, that
15 he could not put his pack down and sit on a public bench.
16 That infuriated me. My father was a veteran. My brothers
17 are veterans. I'm an activist.

18 I see people go out there and spill their blood
19 and they die. I sat with -- three days with Santiago
20 Cisneros. He was the young gentleman who came back from
21 Iraq who died by suicide by cop. I sat out in front of
22 City Hall with him for three days while he was suffering
23 from PTSD. It was a well-known, recorded diagnosis that
24 he had PTSD. When he sat down, he came and talked to us
25 while we were protesting about -- out in front of City

1 Hall, and he sat with us for three days. And he heard how
2 it is that the police treat us. And you could see his
3 heart just sinking, and he even made the remark that "This
4 is why I went over to Iraq? I went over to Iraq to
5 protect my Constitution, to protect my people, just so I
6 could have their rights taken away?"

7 That is not what our gentlemen over there are
8 fighting for are over there for. They're here and there
9 to protect us. And we are being beaten, and we are being
10 harassed, and we are not being given the opportunity to
11 sleep, to eat, to even have shelter. We are left to die
12 in the streets like common dogs.

13 And this is all being perpetrated by the
14 Portland Police Department, and they have their hands in
15 it, and everyone in this room knows this. I've been a
16 pastor. I had my home church stolen from me by banks,
17 through illegal foreclosures, which put me on the street.
18 I spent one year -- I emptied out my bank account a year
19 ago. I emptied out my bank account and I gave everything
20 away, and I said I'm going to go live with the homeless
21 people. I want to know what's going on. I just finished
22 this one-year commitment, and I'm writing a book. I'm
23 writing articles. I'm exposing things that I have
24 witnessed and seen with my own eyes. I've even had to
25 come to the defense of some of our own advocates down

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1 there in front of City Hall.

2 I love this city. I love its people. I am just
3 now coming out of the homeless situation. I wanted to
4 know what it was like to have to be homeless and to have
5 to struggle and bite and scratch to get out of the
6 gutters. I'm finding out. It's a setup. And us, the
7 homeless population, we will continue to be beaten, tased,
8 and we've got to stop financing these -- these weapons.

9 When you have a schizophrenic person standing
10 there and a person walks up to you with \$30,000 worth of
11 equipment strapped to his chest, a schizophrenic thinks
12 that, "He is there to hurt me."

13 So when you gear up these police and you expect
14 them to walk a certain way when they walk up to the
15 person, make sure that these police officers are well
16 prepared to take this matter into a proper course to bring
17 it to a solution with as little or no violence as
18 possible.

19 Thank you very much.

20 THE COURT: Thank you very much, Mr. Serrica.
21 Francis O'Halloran?

22 Oh, Ms. O'Halloran.

23 After Ms. O'Halloran, the next of folks will be
24 Ms. Carlos Covarrubias here. Very good.

25 Barry Joe Stull. Is Mr. Stull here?

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1 Nancy Newell? Nancy Newall here?

2 Is Jeannie Reutter here? Jeannie Reutter?

3 Peter Parks? Is this Peter Parks? Okay.

4 Herschel Soles or Soles.

5 Teresa Roberts? Nicky Johnson? Joe Smith?

6 Michael Mayo? Very good. Kate Lore or Lore, L-O-R-E.

7 Charles Johnson?

8 MR. JOHNSON: Present, Your Honor.

9 THE COURT: Very good. Helen Francis?

10 Very good.

11 Patricia Howard? Patricia Howard here?

12 Greg Benton. Greg Benton?

13 Laurie Benoit? Laurie Benoit?

14 Kelly Caldwell.

15 And Mr. Sutton, are you still here? No. He
16 left.

17 All right. Is there anyone who's here who wants
18 to testify today whose name I haven't read?

19 All right. So thank you for your patience.

20 Mrs. O'Halloran, you may proceed. And please
21 spell your last name. Sorry. One second. Yes, sir.
22 Your name is?

23 MR. LOVATO: Robert Lovato.

24 THE COURT: Mr. Lovato, if we can get to you
25 today, would today be all right for you?

All right. Sorry.

MS. O'HALLORAN: Thank you. I have a pretty soft voice. I hope you can hear me okay.

My name is Francis O-H-A-L-L-O-R-A-N. And I do appreciate the opportunity to be able to be here today to speak to the fairness and adequacy and reasonableness of this agreement.

I am a Portland native, and I'm here representing my petrifying community. There was a couple of specifics in this agreement that I would like to speak to. One is the need to provide an adequate appeals process for victims and their families. And several people have spoken about that, so I won't go into it any further.

I would first like to previously speak to the need to restore public confidence in the Portland Police Bureau's ability to provide the essential element of constitutional policing, as stated with regards to the injunctive relief being sought by the United States.

In the early 1970s, my young family and I moved from student housing at Portland State to Northeast -- Northeast Thompson Street, just off Union Avenue, which is now called Martin Luther King Jr. Boulevard.

In 1972, while employed at the Albina Action

Center, I attended weekly community police forums about profiling, disrespect, and excessive use of force.

Your Honor, that was over 40 years ago. Our community has been on a long journey. Every decade there have been tragic incidents. In response to the public outcry, when Tony Lloyd Stevenson was killed in a police chokehold on April 20th, 1985, some Portland police officers made T-shirts that said, "Don't choke 'em, smoke 'em."

With all due respect, it sometimes seems that that is exactly what was done.

On February 28th, 1996, Deontae Keller was shot in the back and left to die.

Aaron Rahmaan was shot and killed on January 27th, 1998.

It's not clear to me why the Department of Justice -- their investigation only went back 18 months. If it had gone back 10 years, the investigation would have included Kendra James, shot on May 5th, 2003, and left to bleed to death on Northeast Skidmore I-5 overpass. On March 28th, 2004, James Perez was shot to death within 24 seconds of being stopped. Eric Hammond, whose mother was here, was killed in 2010. On January 29th, 2010, Aaron Campbell was shot to death.

The complaint states that the Portland Police

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Bureau officers engaged in this pattern or practice of constitutional violations while performing law enforcement activities within the scope of their employment.

Violations arise from the City's failure to provided adequate policies, training, and supervision to Portland Police Bureau officers on the proper use, reporting, and investigation of force.

How is an individual trained to show respect if he or she doesn't have it?

On July 19th, 2006, when James Chasse, a frail, mentally ill man, was beaten to death, it was not because officers didn't understand he was ill. Their hateful biases took over.

Long before the most recent collective bargaining with the Portland Police union, community members seriously presented two city officials' legitimate concerns. For whatever reason, the City was unable to assess -- assert those community concerns and the union contract still allows 48 hours after a fatal shooting before an officer is required to be interviewed.

And although random drug testing is now required, mandatory testing after a shooting is still not required.

Your Honor, as a citizen, I'm considering whether or not the proposed agreement is fair and

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adequate. Over the years, my Irish-African-Native American children have been profiled more often than any young person should have to tolerate.

Because he was not afraid to assert his constitutional rights on at least two occasions, Portland Police officers threatened to take my eldest son out somewhere and beat him. During his early teens, my youngest son, who's now a student at Portland State University, was profiled and detained as a pedestrian on an average of three times per year within a five-block radius of our home, in the only neighborhood he had ever known.

THE COURT: Ms. O'Halloran, I think I saw that the time had expired.

MS. O'HALLORAN: I just have one more thing.

THE COURT: Sure.

MS. O'HALLORAN: They made it to adulthood, but Keaton Otis, one of my son's childhood friends, was racially profiled and followed and killed and his murder was dismissed as a result of his alleged depression.

THE COURT: Thank you very much.

MS. O'HALLORAN: This agreement should be rejected.

THE COURT: I understand. Thank you, Ms. O'Halloran.

MS. O'HALLORAN: I'm sorry I don't get to talk as much as everyone else did, because I'm late, because I have some important things to say.

THE COURT: Well, we are trying to keep everyone to five minutes.

MS. O'HALLORAN: Now.

THE COURT: Let me ask, is Carlos Covarrubias here?

MR. COVARRUBIAS: Yeah.

THE COURT: I think after that it will be Jeannie Reutter, followed by Michael Mayo.

If you could spell your last name.

MR. COVARRUBIAS: C-O-V-A-R-R-U-B-I-A-S. I'm not an activist, pretty normal guy, but I did have an incident with the police that I think was a little disturbing. What was more disturbing was the IPR's aftermath, essentially.

For one, the first problem I had with the IPR is I don't understand why they don't tell you initially that you do have the right to retain an attorney. It's nowhere on their website, nowhere in any of their literature that they provide to complainants.

THE COURT: "They," being the IPR?

MR. COVARRUBIAS: Yeah. I don't -- not that I recall. I don't remember seeing or hearing anyone telling

me that, "By the way, you can retain an attorney and file a civil suit." I think that's kind of indicative of -- of what they do.

I'll tell you about the incident real fast. In fact, what I'll do is I'll tell you how IPR's newsletter, which is only published online -- how they characterized it.

A community member was walking home from a sports bar, quote/unquote, with headphones on, ignored an officer's request to stop and talk. While the man did eventually comply, he reported that the officer was visibly upset and held his hand near his firearm. Complaint believed he was well within his rights to continue walking and was confused why his actions had so clearly unsettled the officer.

That's almost accurate, except that he didn't hold his hand near his firearm. He began to unholster it and essentially threatened me with -- you know, that if I kept walking -- I don't know, I -- it wasn't really clear what was going on, but I did tell him, you know, I realized he was trying to make mere conversation, and I didn't want to.

Initially, it started with him across the street in a squad car with his window rolled down, shouting at me. I could see that he was trying to make contact with

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me, but I had my headphones on and I was on the other side of the street. Sandy Boulevard is a pretty large street, so I continued walking.

He followed me up the street in his car. He eventually got out of his car and pursued me on foot, at which point he could not tell me what he was stopping me for, in spite of my repeated questioning of, "Am I being cited for something? Why are you stopping me?"

I was only provided -- I was only shouted at, "Where are you going? Stop. What you are doing? You need to stop."

And eventually he stepped back and began to unholster his weapon. At that point he told me to put my hands in the air. I continued to ask him why he was stopping me. He couldn't provide me an answer.

I told him I didn't consent to any search. He patted me down anyways. He sat me on the sidewalk and two more officers arrived.

When the other officers arrived, I was -- I was ID'd, and he continued his questioning, which was essentially unanswerable at that point. Where was I going? What was I doing? Why didn't I stop?

At one point I told him I was walking home from the bar and I was walking home, straight up Sandy Boulevard, makes all logical sense as to where I was going

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to and where I was coming from.

Eventually, one of the other officers was -- piped up and said, "I think he's observing his rights to remain silent," because at that point I didn't answer -- I couldn't answer his question. It was unanswerable. I was let go.

It was a little disturbing, considering I was just walking down the street, and that was -- it was a little silly.

The other disturbing thing is that afterwards, in the IPR, I agreed to a mediation, which seemed to, in essence, just bottle the whole thing up. They stopped all investigative work. No Internal Affairs investigator ever even contacted me. When I asked why, I was told that my complaint was thorough enough and they didn't feel they needed to take a statement. In spite of the fact that their rules actually say that they will conduct an intake interview, they didn't.

So -- and then in the mediation I believe the officer operated in bad faith. He was -- he lied about the facts and essentially threatened me with arrest if the same behavior happened again. I don't know what would be considered bad faith, but it seems like it was conducted in bad faith to me, so --

THE COURT: Thank you very much,

1 Mr. Covarrubias.

2 Is Barry Joe Stull here?

3 UNIDENTIFIED SPEAKER: Yes, Your Honor. I was
4 assaulted at the --

5 THE COURT: Would you mind coming up here so we
6 can all hear you?

7 UNIDENTIFIED SPEAKER: Your Honor, I talked to
8 the staff, and I would like to testify tomorrow morning.
9 I was assaulted Sunday afternoon.

10 THE COURT: Okay. Tomorrow morning.

11 UNIDENTIFIED SPEAKER: Is that all right with
12 you?

13 THE COURT: Tomorrow morning is fine, sir.
14 We'll see you tomorrow morning.

15 Nancy Newell? Jeannie Reutter. Come on up,
16 ma'am. Welcome.

17 MS. REUTTER: Thank you. My name is Jeannie
18 Reutter, and I --

19 THE COURT: Spell your last name, please.

20 MS. REUTTER: R-E-U-T-T-E-R. Reutter is correct
21 in German.

22 I was a police officer between 1976 and 1984 in
23 Colorado, also for two years in the state of Florida. I
24 was the first woman police officer there. It wasn't fun.
25 It was hard, because I was the first, and -- in the

1 university system.

2 My first four years in Craig, Colorado. It was
3 pretty good. I ended up being an EMT, as well. But when
4 we got a new police chief, things changed. He was from
5 the Los Angeles Police Department. One of the things that
6 changed was he said we were no longer to record
7 blow-by-blow accounts. He was tired, because some of us
8 were getting a few soft tissue injuries. It was nothing
9 that was any big deal to me. That was part of the job.

10 But what ended up happening was wholesale
11 beatings. And the thing that bothered me was he had hired
12 people from LAPD and sort of like monkey see, monkey do,
13 the other officers, the ones that I respected -- not all
14 of them, but a few, started changing, and people were
15 getting beaten that shouldn't get beaten.

16 I was never involved in any of that. I did my
17 best to stop it. I wasn't able to stop it. I'm one
18 person. But I finally did end up stopping it maybe
19 somewhat, because I turned in the supervisor. We were on
20 a call one night, and he ended up beating a prisoner in
21 handcuffs, breaking his nose, his jaw, there were a bunch
22 of other injuries. There were four of us officers there
23 at the scene. I can tell you what happens to a police
24 officer who goes against the system. They get pushed into
25 the ground. They do the best to run right over you.

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1 And the lawyers that I went to, Streambrook
2 Springs, Colorado, district attorney didn't give him any
3 deals. Normal plea deals that you would have. That's
4 what ended up happening with him. And it was just a real
5 difficult situation.

6 And to let you know, you might think, well, it's
7 just some woman officer. I submitted a picture of
8 Colorado state patrol officer -- this is a white officer,
9 but I would call him my hero, because for -- he was in
10 Cortez, Colorado, and while he was there he turned in
11 somebody for -- another officer for beating up a prisoner
12 in the jail. He didn't get a cover unit for an entire
13 year. He's -- he put his life on the line to do what was
14 right and to stand there and say, "I am not going to put
15 up with this," and he -- and he stood for it.

16 And I'm just saying I'm definitely for some type
17 of independent police review. The police department can't
18 do it on their own. They just don't have the will.

19 And I'd sure like to thank the Court,
20 specifically Judge Greg West. My department tried to pull
21 me out. I was issued seven subpoenas before I left. I
22 had multiple DUI cases that I had made, and Judge Greg
23 West would not allow them to take me back. He made me
24 promise to go and testify, but he refused the State of
25 Colorado to take me back.

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1 You have no idea how grateful I was to that
2 judge.

3 And, finally, on a defense motion to compel, I
4 asked the Court to issue it years later, whenever there
5 was corruption again exposed, it was six years later, and
6 there was a fatal accident, and the same officer that was
7 involved in the beating -- like my lawyer says, it all
8 goes downhill once officers start lying and evidence was
9 goofed up on that one, and I was pulled back on that. And
10 this is the officer that -- the trooper that shot the
11 crime scene, catching the moving evidence at the scene.

12 If you don't stop police from doing what's
13 wrong, they're going to do it, and they're going to do it
14 even better the next time. You have to stop them.

15 And then, finally, I would like to say kind
16 of -- with the black community, I went to see -- I don't
17 know her very well, but it's Gloria from The Talking Drum
18 on Killingsworth. And I like that store, because, well,
19 there's books on black heroes, inventors, and people like
20 that. I support the black community here in -- I live in
21 Salem. But she was gone, and I couldn't help but wonder,
22 you know, why is she gone and why wasn't there support for
23 that store?

24 It looked to me like there were quite a few
25 people going in for meetings and kind of to enjoy one

1 another's company, and it's like we have to support the
2 communities of color, because they're -- they just don't
3 have it.

4 THE COURT: Thank you very much, Ms. Reutter. I
5 appreciate your being here.

6 We're going to hear from four more people this
7 evening, and then we'll recess for the night. We'll hear
8 from Michael Mayo, Charles Johnson, Allan Francis, and
9 Patricia Howard, in that order.

10 So Michael Mayo?

11 MR. MAYO: You're quite right. It's Mayo. It's
12 an Italian name, like Serrica; as opposed to the Spanish
13 Serica.

14 My name is Michael Mayo, and I'm the secretary
15 of the Cascadia Chapter of the Pacific Green Party. I
16 want to advise you, Judge Simon, of why you should reject
17 this agreement. Unlike the Copwatch folks and the other
18 folks who have testified, I'm quite skeptical that a bunch
19 of policy changes are going to make the situation of
20 police misconduct in our city better. And I recall for
21 you the fact that the Stalin constitution of 1936 was that
22 at the time it was adopted, the most liberal, the most
23 free constitution in the world. It was adopted at the
24 time, of course, that they were killing hundreds of
25 thousands of people and sending millions into -- into

1 internal exile in Siberia.

2 The United States has a record of ignoring its
3 own policies. It is specifically, I'll recall to you, the
4 fact that we have signed an international agreement not to
5 torture, and the entire executive branch went ahead and
6 tortured people. The vice president is still boasting
7 about it to this day.

8 So I am not sure that a bunch of changes in
9 policy are going to actually change the problem or solve
10 the problem.

11 THE COURT: So what will?

12 MR. MAYO: If you reject this agreement and we
13 have meaningful, independent police oversight, then, yes,
14 that is the crucial reason you should reject this
15 agreement. I have been 27 years a teacher. 20 years here
16 in Portland. I got my little 20-year pin before I
17 retired. And I can tell you, you can read the paper, and
18 every -- every six months, at least, you will see a
19 teacher fired for messing around with the kids. That's
20 what happens under a professional organization that is
21 subject to oversight.

22 Same thing happens with judges, too, when they
23 start -- when they start acting up or acting in a manner
24 that is -- that is unfair. Very frequently we see that
25 judges are reprimanded. Much more frequently than we see

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1 police officers in our city being -- being fired.

2 I would like to point out that the -- we are
3 aware -- you are, Judge -- of the fact that it's not just
4 Portland that we've got police acting up. There's a
5 militarization of the police forces throughout the country
6 in -- in the last two decades, and you have an opportunity
7 to change that right here in Portland by rejecting this
8 agreement which leaves the independent police bureau
9 toothless and powerless.

10 The IPR director himself, Constantin Severe, has
11 testified that without subpoena power he doesn't think
12 there's any possibility of meaningful investigations.
13 What does that say? They don't have the subpoena power
14 now. So that all of the 10 years, 15 years of which the
15 Independent Police Review has been operating, they have
16 not done any meaningful investigation according to their
17 director.

18 Finally, I want to leave you with -- I can be
19 short -- I want to leave you with this consideration about
20 how little a bunch of advocacy about how we're going to do
21 better in the future actually works, without having
22 independent oversight. And, for that instance, I give you
23 the Roman Catholic Church.

24 THE COURT: Mr. Mayo, you can be brief, you can
25 be succinct, you can be to the point, but you can't be

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1 short.

2 MR. MAYO: I'll leave the final word with you.

3 THE COURT: Thank you, Mr. Mayo. I appreciate
4 those comments. Charles Johnson, please.

5 Good afternoon, Mr. Johnson.

6 MR. JOHNSON: Thank you, Your Honor. Charles
7 Johnson.

8 And, unfortunately, there may be some thought
9 here that under the law we're constrained to think about
10 what's fair, adequate, and reasonable. To that extent, we
11 should also think about fair, adequate, and reasonable for
12 whom. Your Honor, primarily you're burdened with either
13 doing civil cases or criminal cases, in which case you
14 only have to think primarily about two parties.

15 THE COURT: I have both cases. I handle
16 criminal cases and civil cases, all federal.

17 MR. JOHNSON: But what we have here, really, is
18 different than a conventional civil case. We don't have
19 two parties squabbling about monetary compensation and
20 guilt or one injury. We have the need for the
21 institutions of We the People to protect the people from
22 the Government. And, to that extent, I hope that you will
23 do research and liberally construe what is fair and
24 adequate and reasonable to protect the mentally ill, those
25 perceived to be mentally ill, which in Portland probably

1 who means anybody who isn't lighter than me, and all of
2 the citizens to be protected from injury from our police.

3 Really, I think you've already heard enough
4 to -- I don't know if you need three strikes. I think you
5 need one strike. It's unreasonable to believe that just
6 because the Department of Justice and yourself might be
7 looking, the Portland Police can fix themselves. We've
8 established a historical record that they can't.

9 There are some things on paper that are talking
10 about trying and probably for your own health you maybe
11 should reject this agreement to supervise the improvement
12 of the Portland Police Department based on the record
13 that's been established today and over the past few years
14 and going back 40 years.

15 Fairness is normally the civil thing. You just
16 have to think is this fair to the Portland Police
17 Bureau -- or the two litigants; the City of Portland and
18 the United States of America. Well, fortunately it's the
19 United States of America you have to think about. But all
20 of us. What's fair for us? You might have to think maybe
21 a little better than the best intentions of those people
22 here from the Civil Rights Division, the Department of
23 Justice, and Ms. Marshall's office of the -- the United
24 States Attorney.

25 Really, there's a prima facie case that this is

1 not adequate and reasonable enough to reform, as

2 Mr. Kafoury told us, a department that acts with impunity.

3 It needs more teeth, and it needs the people's
4 teeth, not some bureaucratic teeth.

5 So I will leave it there and hope that you will
6 find over the next month, before the 11th, ways to deal
7 with the uncertainty that you mentioned when you first
8 opened this hearing. You said if the agreement is
9 rejected, who knows what could happen.

10 Well, we know that even if the United States
11 attorneys and the Department of Justice might want to
12 throw their hands up in the air because they think they've
13 done their best, they can't. They have a legal obligation
14 to protect the mentally ill and those perceived to be
15 mentally ill. So they'll have to pursue the case.

16 For the City of Portland, they probably do think
17 this is fair, reasonable, and adequate and are ready to
18 run. But We the People need to hold them accountable to
19 think better about this.

20 Mr. Kafoury was up here and one thing he didn't
21 really elaborate on is it's impossible for him to win,
22 because what he really wants to do is to end injury to his
23 neighbors. And when he wins in court, all he ever does is
24 transfer the people's tax money to a few unfortunate
25 victims, and the Kafourys don't want to win that way.

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1 They want to stop the police from injuring fellow citizens
2 and neighbors, and I believe the only way that will happen
3 is if you reject the agreement.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Mr. Johnson. I
6 appreciate your comments.

7 I'll hear please from Allan Francis.

8 MR. FRANCIS: Your Honor, I came here today to
9 testify from the point of a person with a mental illness
10 that has been dealt with by the police.

11 THE COURT: I'm having trouble hearing you.
12 You're welcome to come up here to say what you want to
13 say.

14 MR. FRANCIS: I'm not quite sure I'm hearing
15 what you want to say.

16 THE COURT: So please state your name and --

17 MR. FRANCIS: Alan Francis, F-R-A-N-C-I-S. I
18 came here today to testify from the point of view as a
19 person with a mental illness that has had police
20 encounters during crisis. However, I do feel that I'm
21 severely unprepared and would ask that you would allow me
22 to speak tomorrow morning.

23 THE COURT: Of course. Of course. I'm sorry to
24 bring you up just to say that, but of course.

25 MR. FRANCIS: Thank you very much for your time.

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1 THE COURT: See you tomorrow morning or --
2 tomorrow. Yeah, tomorrow morning.

3 Let me ask: Is Patricia Howard here? Come on
4 up, please, if you wish.

5 MS. HOWARD: Good afternoon, Judge, and good
6 afternoon, everyone. I actually had made an appointment
7 to speak tomorrow, because I thought I had come too late.
8 But I am here to testify, hoping that you will reject this
9 offer. As I've been sitting in the attendance, listening
10 to everyone and trying to make certain that my statements
11 would not be redundant, I tried to think of something
12 rather succinctly that would impress you. So what I would
13 like to say is that can we take the matches from the
14 arsonist, and we're talking about the policemen, and let's
15 give the matches to the firefighters.

16 The firefighters, who are they? Those people
17 who advocated for this settlement. Those ministers from
18 my community I represent, my church, New Hope Missionary
19 Baptist Church, and I know of several of the instances
20 that have been related here.

21 My great-niece happened to be one of the ones
22 that was killed.

23 If we allow the arsonist -- quote, policemen --
24 to govern themselves with the matches, the fires will
25 continue to burn, whether you see them literally or

whether it's the embers of their own dysfunction. I do believe they can be helped. Whether they're capable of policing, helping, healing themselves, I'm not so certain.

You have a big job to do. I hope something that you've heard will make it more applicable or pleasurable or palatable to our palates -- we, the victims; we, the mothers, aunts, sisters, friends, church members, of those who are no longer able to fight for themselves.

I can't say that I have developed a perfect plan, but in reading this settlement plan, it doesn't seem to me as it's going to work.

THE COURT: Why not?

MS. HOWARD: Because of all of the information that they have given you. It's not the first time that these overhauls, these reconstructions, these behavioral classes. If a person has within themselves that they are going to get away with it as much as they can and they go to a class and they receive the certificate, but the person inside of them never changes, you'll never know it until the next big calamity.

So the certificates of going to class and acting out all the little scenarios are just actors on a play -- on a stage. And you know when the curtain falls, the actors take off their costumes, and they go back to their homes, and they become the real people that they

are.

Unfortunately -- and I've had some very good experiences with the police department, so I'm not trashing the whole bunch of them. I'm just saying that it's a lot of money for the City of Portland to disburse, along with a lot of money that they've already had, and it hasn't shown that they really get it.

So I'm hoping that I've been clear to say let's not let the arsonist keep the matches. Let's give them to the firefighters, those people who brought about the result of this settlement, and I see Pastor Haynes here, and I know he's one of the firefighters.

THE COURT: Well, you know --

MS. HOWARD: Thank you, Your Honor.

THE COURT: Thank you, Ms. Howard. Don't go away. Thank you. One of the things that you say, and let me ask you this: We've heard a lot of testimony today -- we'll hear more tomorrow -- about various ways in which the proposed settlement agreement may be deficient, depending on who's talking; could be improved, depending upon other folks who are talking. I'm hearing all of that. I'm processing all of that. The problem with your example in terms of -- your analogy about the matches, one of the things that I think we have never seen before in this city is where we have folks from the U.S. Department

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of Justice, the Civil Rights Division, and the U.S. Attorney's Office saying, "We will be there and we will monitor compliance, and we will periodically report how well or how poorly things are going, and if it's not going well, we'll talk about what to do about this. If things are going well, we'll report that." Now, one of the things that I've heard, among many others today, that, well, maybe there should be some other ability for people to monitor and report, including to the Court, including from the AMA Coalition. I know that's where Dr. Haynes is participating in. He's one of the firefighters.

MS. HOWARD: Yes.

THE COURT: To what extent do you factor into your analysis -- I don't know whether yet to label it pessimism or qualified optimism -- the fact that we've never before seen a situation where we are in this -- where we do have a possibility of outside monitors. The U.S. Department of Justice and the U.S. Attorney's Office, Civil Rights Division, and the U.S. Attorney's Office saying they will monitor it, you know, as long as it takes to ensure that there's substantial compliance. Putting aside that there may be some uncertainty what is substantial compliance, but they'll be there monitoring it. Maybe we give them some reinforcements in monitoring it. Maybe we have a little

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bit of further active court receipt of monitoring reports and more public dialogue about how things are going, where things are going well, where things are not going so well, both from interested parties, AMA Coalition, among others, maybe the public. What's your reaction to all of that?

MS. HOWARD: I would agree that certainly the Justice Department and all those agencies that you name should be involved, but they're not here. They're not my neighbor. They don't live next door. So you have to have someone from the community.

I felt the pain of the lady who had the two sons that were involved with distasteful police activity and the young man who had been harassed walking down the street. People from Washington, D.C. and those agencies that you named are not going to be here soon enough to help either one of them. They need someone that they can either pick up a phone and call or get on a bus and go to an office down the street and say, "This happened to me and this is what I want you to check into." That person is the one who needs to talk to those other agencies. There has to be some legitimate community immediate involvement and immediate availability to respond.

I have a daughter who has seizures. She left home. This was a good case of the police. She was stopped. We called and told them she was missing. She

1 stopped -- was stopped on Sandy by a policeman who, when
2 he radioed in, found that she had got on her bike, gotten
3 lost, and they brought her back home.

4 I don't have a sad story to tell, but, one, she
5 was female; two, she was, of course, mentally challenged,
6 and they could tell right away, but she didn't follow the
7 instructions that the policeman gave, and we have to be
8 thankful that because -- as I heard the young man say,
9 because he didn't follow the instructions. He received a
10 totally different kind of solution to his problem, and so
11 that's what I'm saying.

12 THE COURT: When you say there needs to be
13 someone here locally to be called, can the AMA Coalition
14 fill that role?

15 MS. HOWARD: I think they could help fill that
16 role. But even with -- I am a believer, but if you have
17 people who are not -- nonbelievers, then you need someone
18 for them, too; just like you need someone for the mentally
19 ill and someone for the physically challenged. So you
20 can't just put it all in one place. But they should be
21 involved and -- as other groups who can actually present,
22 as -- to use your word, a receipt that says "This is the
23 action that was taken on this," and they justify it with
24 whatever criteria that you have.

25 THE COURT: Thank you very much, Ms. Howard. I

1 appreciate your comments.

2 MS. HOWARD: Thank you, Your Honor. Thank you
3 for --

4 THE COURT: All right. Folks -- thank you --
5 let me, before we adjourn for the evening, tell you who
6 I've got on my list to testify for tomorrow. If you hear
7 your name and you don't want to testify, come tell us
8 after this hearing today, and we'll take you off the list.
9 But, more significantly, if you don't hear your name and
10 you do want to testify, it means we don't have your name
11 on this list, so please come talk to us and make sure it
12 gets on your list -- on this list.

13 And I'm going to ask again for tomorrow everyone
14 here to limit their comments to five minutes per person.
15 We'll use our same yellow and red system for tomorrow.

16 The names I have on the list are Briana Swift,
17 Don Moore, Sylvia Zingesser, Tom Muller, Kalei Luyben,
18 Ted Luyben, Anne Brayfield, Donna Lewis, Roberto Lovato,
19 Sharon Maxwell, Mark Kramer on behalf the National Lawyers
20 Guild, Angela Hammit, S. Jenika, Barry Sutton,
21 Crystal Elinski, Eric Terrell, Daniel Chevalier,
22 Alan Francis, Barry Joe Stull, Nancy Newell, Allan
23 Francis, Herschel Soles, Teresa Roberts, Nikki Johnson,
24 Joe Smith, Kate Lore, Greg Benton, Laurie Benoit, Kelly
25 Caldwell, Peter Parks, Terri Walker, Deborah Hall,

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1 Connie Olson, David Whitfield, Donald Wolf, Nancy Howell,
2 and also I do have, Mr. Steenson, your name is here as
3 wanting some additional time in the end.

4 So as I said, if your name is on the list and
5 you've changed your mind and you don't want to testify
6 tomorrow, please come up right after this hearing and let
7 my staff know.

8 If your name is not on the list and you want to
9 testify tomorrow, please come up right after this hearing
10 and let my staff know. We'll be in recess until
11 8:30 tomorrow morning in this courtroom. Thank you.

12 (Hearing was adjourned.)

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C E R T I F I C A T E

1 UNITED STATES OF AMERICA,)
2)
3 Plaintiff,) Case No. 3:12-CV-02265-SI
4)
5 v.)
6)
7 THE CITY OF PORTLAND,)
8)
9 Defendant.)
10 _____)

11 Volume 1

12 I certify, by signing below, that the foregoing
13 is a correct transcript of the record of proceedings in
14 the above-entitled cause. A transcript without an
15 original signature, conformed signature or digitally
16 signed signature is not certified.

17 Dated this 28th day of February, 2014.

18 /s/ Dennis W. Apodaca
19 DENNIS W. APODACA, RDR, RMR, FCRR, CRR
20 Official Court Reporter

21 and

22 /s/ Jill L. Erwin
23 JILL L. ERWIN, RDR, RMR, CSR, CRR
24 Official Court Reporter
25

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Case No. 3:12-CV-02265-SI
)
 v.) February 19, 2014
)
 THE CITY OF PORTLAND,) Portland, Oregon
)
 Defendant.)
 _____) Volume 2

(FAIRNESS HEARING)

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MICHAEL H. SIMON

UNITED STATES DISTRICT COURT JUDGE

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(February 19, 2014)

P R O C E E D I N G S

(Open court; counsel present:)

(Section 7, Court Reporter Dennis Apodaca.)

THE COURT: Good morning.

COUNSEL: Good morning.

THE COURT: All right. We are continuing with the fairness hearing in the case of United States versus City of Portland.

Do we have Ms. Briana Swift here?

So I would like to hear from Ms. Swift, followed by Don Moore.

Mr. Moore, you will be second.

Then Sylvia Zingeser.

And then do we have Mr. Daniel Chevalier? Very good.

Then S.S. Jenika?

MS. JENIKA: It is S. Jenika.

THE COURT: Okay. I am sorry. S. Jenika.

All right. That will be the beginning.

Ms. Swift, good morning. You may proceed.

MS. SWIFT: Good morning, Your Honor.

THE COURT: Good morning.

MS. SWIFT: My name is Briana Swift. S-W-I-F-T.

My hope is to provide an insightful inside look

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into Portland's police accountability system. Namely, the IA/IPR/CRC process. I respectfully request that Your Honor keep in mind these points in determining whether to approve the settlement agreement.

I draw my experience from serving as a volunteer advocate for two Portland community members throughout this process. The purpose of this process is to determine whether officers violated member policy as set out by Portland Police Bureau's official manual directives.

First, IPR and CRC do not evaluate potential constitutional violations, despite being written into police policy.

In two CRC appeal hearings, I argued the complainant's Fourth Amendment rights were violated. At those hearings, IPR and some CRC members felt that my constitutional arguments were inappropriate for the CRC appeal setting. Yet, the justifications often relied upon by IA and IPR to exonerate PPB officers are the same legal principles argued under. If the CRC lacks awareness of these legal standards, it seems impossible for the CRC to meaningfully carry out its task of determining whether the findings by IA and IPR are reasonable. In fact, at one hearing, the IPR representative stated that there is a difference between a search incident to arrest as covered by the directives and as a Court would look to in a

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criminal case. He then went on to say if this was a criminal case and he was an attorney, he would have argued that there was a potential Fourth Amendment violation in the officers' search of the complainant.

This statement was troubling for me because the directive on searches explicitly requires officers to be aware of constitutional considerations when conducting a search. Directive 650.00 entitled, "Search Warrants and Exceptions" provides:

"In order to search without a warrant, members must comply with the requirements for an exception as currently set down by the courts. As this area of law is constantly changing, it is all members' responsibility to remain aware of current law."

My next point that I wish to bring to light is that IA and IPR have admitted material information in official disposition letters, preventing complainants a meaningful opportunity to appeal the finding to the CRC or pursue legal action.

In one case, IPR sent the complainant a disposition letter approving IA's decision to exonerate the officers and an explanation of IA's rationale. It stated, "The investigation revealed the officers were responding to a call of a subject walking down the street going through mailboxes. The description of the subject

1 was similar to you in appearance."

2 Not until the CRC appeal hearing did the
3 complainant learn that the officers were looking for a
4 five-foot-four to five-foot-six, thin, Hispanic man in his
5 late 30s slouched over.

6 THE COURT: Ms. Swift, you are welcome to read a
7 little bit more slowly. If you need a bit more time, you
8 can.

9 MS. SWIFT: Thank you.

10 While the suspect was reported to be wearing
11 similar clothing to the complainant, the complainant is a
12 four-foot-ten African-American woman in her late 40s with
13 a curvy build. By claiming in the disposition letter that
14 the suspect was similar to the complainant in appearance,
15 she was foreclosed a meaningful decision about whether or
16 not to go through an appeal.

17 Additionally, the dispositional letter failed to
18 mention any justification for the search of the
19 complainant's person or backpack beyond officer safety.
20 Only when she went to the CRC appeal hearing did she learn
21 that she was searched incident to arrest.

22 My third point: Complainants need protection
23 against the misuse of their personal history.

24 In both CRC appeals in which I acted as
25 advocate, there were references made to complainant's past

1 criminal history. This practice is sure to deter future
2 complainants from bringing forth potentially meritorious
3 complaints. On a November 6th, 2013 CRC hearing, the
4 chair of CRC noted a seeming disparity in treatment when
5 it comes to whether or not a complainant's criminal
6 history gets included in a CRC case file. It seems when a
7 complainant has a past criminal history, there is not much
8 concern about the inclusion of that information in the
9 case file than if the complainant is viewed as a more
10 "favored member of the public," including the past history
11 of officers. One CRC member noted: You must remember;
12 complainants don't have a union.

13 IA acknowledged at this hearing that past
14 history is irrelevant unless the information was known to
15 the officers at the time of the incident and it impacted
16 the encounter at issue.

17 Moreover, the CRC noted that the inclusion of
18 this information confuses the reasonable person standard
19 that they apply in determining whether a disposition was
20 reasonable, because they do not know whether IA relied on
21 that information.

22 In one case, the lieutenant who headed the IA
23 investigation opened the CRC hearing by disclosing that
24 the complainant was on her way to "court-ordered community
25 service" when the police encounter at issue took place.

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1 This served no other purpose than try to cast a negative
2 light on the complainant from the get-go. He then
3 proceeded to explain that during the encounter the
4 complainant was uncooperative in every way, which was
5 consistent with her prior police actions. He then
6 described a one-sided view of a past incident involving
7 the complainant and her son, where the complainant was
8 screaming at PPB officers, calling them "Satan." What he
9 failed to mention was that she was screaming because she
10 believed the cops were tasing her son nearly to the point
11 of death.

12 CRC received seven to eight police reports in
13 their file covering this prior interaction -- which the
14 covers at issue in the CRC hearing taking place had no
15 knowledge of -- while only one report in the file was
16 related to the CRC case being evaluated. Additionally,
17 IPA erroneously included in the CRC file the criminal
18 history of the complainant's son. IPR apologized for
19 this.

20 In the second case I worked, following the CRC
21 recommendation that Portland Police find one of its
22 officers violated the directive on courtesy when he
23 accused the complainant of being a pimp, the Chief of
24 Police wrote a letter to CRC justifying the Bureau's
25 rejection of the CRC recommendation. In that letter, the

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1 Chief extensively outlined the complainant's past criminal
2 history -- oh, time's up.

3 THE COURT: If you have a concluding comment or
4 two, that's fine. Also, what I would suggest, if you
5 want, you are welcome to submit your written statement,
6 and we will incorporate it. If you would like to give me
7 a final point or two, you are welcome to.

8 MS. SWIFT: One final point with respect to the
9 21-day allegations, both clients I worked with, they
10 didn't mind the longer time it took. It was the quality
11 of investigation that was most important to them.

12 Thank you very much.

13 Mary, would you please get --

14 MS. SWIFT. This has writing all over it. I
15 will submit this to your chambers.

16 THE COURT: Thank you very much.

17 Now, we have three witnesses on the National
18 Alliance on Mental Illness. We have Don Moore, Sylvia
19 Zingeser and the president, Terri Walker.

20 By the way, let me tell you all that I have read
21 Ms. Walker's letter of January 28. Thank you very much.
22 And, Ms. Zingeser, your letter of January 28th. Thank you
23 very much.

24 Ms. Zingeser, I also received your additional
25 letter, your separate letter of January 28th, that begins

1 with "Cheryl's Story." I will request five minutes per
2 person, please. Thank you, Your Honor.

3 MR. MOORE: Don Moore. M-O-O-R-E.

4 I speak from the perspective of a mental health
5 advocate, as my oldest daughter is disabled with
6 schizophrenia and lives in a group home. Since 2003, I
7 have held great interest in mental health issues during my
8 tenure as president of NAMI Multnomah County from 2004 to
9 2007. I've spent considerable time dealing with issues of
10 in-custody treatment by Portland Police Bureau.

11 The proposed settlement concerns me on several
12 levels. In the September 2012 letter from the Department
13 of Justice to Mayor Adams, it spoke of "deficiencies in
14 policy, training, and supervision" and characterized them
15 as systemic. These findings are at the heart of the need
16 for remedies that rectify those deficiencies. It is my
17 fear that the proposed remedies do not go far enough to
18 break the persistent and systemic problems that plague
19 Portland Police Bureau as an organization.

20 So at the time Mayor Potter created a mandate
21 for crisis intervention training, Portland Police Bureau
22 was approached by advocacy groups, NAMI being one of
23 those, and we were wanting to have people with mental
24 illness diagnoses participate in the crisis intervention
25 training. We were pretty much flatly refused. It was

1 said we are going to do it by tape. We are not going to
2 follow the national model. We are going to do something
3 that's appropriate for us.

4 This goes to the heart of the problem where a
5 solution is proposed, but then there is a rejection of
6 what the solution is, and we will do it our way. That
7 seems to be a prevalent attitude. Given the astute
8 political skill of the Bureau to protect its own
9 interests, I believe there is not enough influence to
10 overcome the inertia of decades of self-interest engaged
11 in by the Bureau.

12 Another concern is the suggested qualifications
13 for entry into a CIT unit. I strongly oppose the criteria
14 suggested for inclusion in this unit, one of which is
15 being a lapse of time passed from an incident that would
16 not bar an officer from being able to join the unit. In
17 other words, it is length of time.

18 The passing of time, three years in this case,
19 does not affirm a change in the treatment of suspects or
20 ability to revert to previously engaged-in behaviors. In
21 effect, it makes an assumption that behavior/attitude is
22 changed simply by the passage of time.

23 THE COURT: So what should be the criteria then?

24 MR. MOORE: Well, my suggestion would be to use
25 an alternative standard of admission, such as

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1 participation in and successful involvement in community
2 activities that would demonstrate a changed behavior as it
3 respects involvements of citizens in crisis. There also
4 needs to be some type of affirmative, credible evidence of
5 involvement that would demonstrate behavior change by an
6 officer.

7 In addition, I would propose some type of
8 nomination and qualification process necessary to join the
9 CIT unit. A suggestion might be the requirement of
10 additional officers nominating and supporting fellow
11 officers for inclusion in a voluntary CIT unit. There
12 simply should be more criteria other than lack of use of
13 force incidents and a passage of a specific period of time
14 for a person to volunteer.

15 If we look again at the deficiencies, the
16 problems were systemic. Although suggestions have been
17 made, most of the suggestions are voluntary or advisory in
18 nature. I think there should be some honest discussion
19 about developing criteria for inclusion in such a unit.

20 The proposals, while making a substantial effort
21 to make changes, are less structural than I would consider
22 necessary to make credible change. It allows relatively
23 weak criteria for officers to join the special unit with
24 temperament, expertise, and desire to interact with
25 mentally ill persons. Simply the passage of time is not

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1 enough to assure that the officers volunteering for the
2 unit are in fact of a different mind.

3 So given the history of interactions and the
4 inability to hold officers responsible and accountable for
5 previous interactions, the proposals need to go further in
6 order to remedy systemic problems, creating a unit of
7 officers that maintains fidelity with a national crisis
8 intervention model and engages in more rigorous standards.
9 Standards for inclusion in that unit are, in my opinion,
10 necessary parts of a settlement that serves our citizens.

11 THE COURT: Thank you very much, Mr. Moore.

12 Either Ms. Walker or Ms. Zingeser. Who is going
13 to speak next?

14 I received two letters from Ms. Zingeser, both
15 dated January 28th. One begins with "Cheryl's Story," and
16 the other talks about three pages on other issues.

17 MS. ZINGESER: I will let Terri Walker go first.

18 THE COURT: Good morning, Ms. Walker.

19 MS. WALKER: My name is Terri Walker. I was
20 board president of NAMI for six years. We just had our
21 annual meeting last night, and we will be electing a new
22 president. I also had been involved as an advocate
23 through NAMI for the Bazelon Safer PDX Committee that was
24 looking into the interactions of the Portland Police with
25 people with mental illness, and I worked for a time on the

1 CIT Advisory Team.

2 So I have some knowledge of what goes on with
3 the work that's being done. I just want to say that NAMI
4 fully supports what Don has just presented. I didn't
5 bring a written statement today.

6 We have a program called Family-to-Family class
7 where we meet with families who have individuals living
8 with mental illness in crisis. For six years doing that
9 and also facilitating support groups where people come
10 in -- that's really our front door for people in crisis
11 who are trying to bring help to their loved ones.

12 Usually within a crisis they have to be 24 hours
13 of extreme danger, which means you usually have to call
14 the police to be able to get them home. A lot of the
15 discussions that we have and are still having are that
16 family members are really afraid to call the police,
17 because we are afraid instead of being able to get help,
18 they are going to be harmed.

19 I think that's all I have to say.

20 THE COURT: Very good. Thank you.

21 MS. WALKER: We need this agreement to work.

22 THE COURT: Thank you, Ms. Walker.

23 Would you please state your name and spell your
24 last name.

25 MS. ZINGESER: My first is Sylvia, S-Y-L-V-I-A;

1 my last is Zingeser, Z-I-N-G-E-S-E-R.

2 THE COURT: Thank you.

3 MS. ZINGESER: Thank you, Judge Simon, for being
4 here. I want to thank the AMA for making this happen. If
5 it weren't for them, we wouldn't be having this
6 investigation. I am also troubled by the fact that the
7 racial profiling was not addressed in this agreement.
8 Only because of Aaron Campbell's death are we even
9 addressing excessive use of force on people who experience
10 mental health crisis and the need of assistance of police.

11 I am a NAMI member. The way I became a NAMI
12 member is -- my son is bipolar with schizoid-affective
13 disorder. I was out of town. I think you read my letter.
14 I was out of town. I got a call from him saying that he
15 was done. He was a suicide call.

16 I called the Portland Police and asked them to
17 go check on him and get him to the hospital. What
18 happened was he ended up being attacked. They tried to
19 help him out, but they looked at it as the best way to
20 deal with this is just take him down. So there was a pig
21 pile essentially, and he got socked in the eye.

22 He had a piece of paper in his billfold that
23 said that he had assaulted the officer, and the
24 interesting thing about this is that I was married to a
25 Portland police officer for 17 and a half years. The

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1 tragedy on that is that I saw his personality change as he
2 went on with his career. He tried to commit suicide. He
3 shot himself in the head. He lived and he ultimately died
4 from alcoholism.

5 So I am on both sides of this family. I came
6 from a police family. I cannot tell you what my son has
7 gone through. He grew up with police officers. He
8 hunted. He fished with police officers. To have them on
9 a suicide call take him down the way that came down, I
10 came very close to suing the City, but I worked this out
11 with Commander Smith.

12 I am now on the Training Advisory Council. I
13 was on the CIT. What I can tell you is, having watched
14 this, having been there and had a lot of talks, I realize
15 there are no measurements that you can go by, and we need
16 a quality assurance program. I don't see that in the
17 agreement. It is sort of mentioned about collecting data.
18 It needs to be a solid agreement where the quality
19 assurance is there, it is tracked, and we can measure it.
20 Maybe we can save some of our officers, such as the person
21 that I had been married to at one time.

22 It was a traumatic event. I can tell you this,
23 every time an officer has an event where they get
24 involved, where they have an altercation, they take
25 someone down, whether they are mentally ill or they are

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1 not, that officer goes home. It affects the family. It
2 affects everyone. We need this agreement to really work.
3 I don't know what else to say to you.

4 THE COURT: I appreciate those comments,
5 Ms. Zingeser.

6 MS. ZINGESER: Yes. And I agree with what many
7 people have said here throughout this hearing. I really
8 appreciate you taking the time. Thank you so much.

9 THE COURT: Thank you for coming.

10 Daniel Chevalier. If I'm mispronouncing your
11 name, I apologize.

12 MR. CHEVALIER: My name is Daniel Chevalier.
13 The last name is spelled C-H-E-V-A-L-I-E-R.

14 THE COURT: Welcome.

15 MR. CHEVALIER: Thank you. I had a short
16 statement, but I fear it is not short enough, so I am
17 going to ask the Court to forgive me. I am not a legal
18 professional or politically adept. I am actually a data
19 manager. I manage data. It is as exciting as it sounds.

20 I have had about three weeks to familiarize
21 myself with the agreement and the attendant documents.
22 One of the arguments that I have heard restated in various
23 forms is the notion --

24 THE COURT: Would you speak into the microphone,
25 please.

MR. CHEVALIER: One of the arguments that I have heard restated in various forms is the notion that the settlement agreement leaves police accountability under the primary supervision of the department itself, which is stated as a necessity but -- as the DOJ expert witness on police reform testified yesterday, in order for full acceptance for reforms of the settlement agreement. This point has been stated in various different ways and probably a lot better than I'm going to do it. I am actually going to skip that.

My second point was about the -- in this point I was intending to quote from document 4 in U.S. versus City of Portland. "The City of Portland disagrees with the conclusion of the U.S. regarding the PPB's allege use of force but, nonetheless, has agreed to enter into the agreement."

As I said, I am not a legal professional.

THE COURT: What they are essentially doing there, they are not admitting liability, but they are entering into a settlement so that hopefully the problems that are alleged will not happen in the future.

MR. CHEVALIER: Agreed. The language in the response is actually quite clear. But when I read it, I think my personal surprise was -- I understood the difference between the admission and the wholesale

rejection that Justice Department's probes -- recommendations based on those findings, which I found surprising. I haven't had much time to familiarize myself. This is my very first public hearing. This is my very first time addressing a court, and perhaps I will move on to my third point.

THE COURT: You are doing fine; take your time.

MR. CHEVALIER: Thank you. Perhaps I will move on to my third point, which is the findings letter. I familiarized myself with the DOJ findings letter to former Mayor Adams. It is something that I, as an untutored citizen, thought was a broad but rather unsentimental piece of factual reportage. All of the evidence in the findings letter was facts, sort of an enumeration of fact.

That having been said, I realize that they accept the facts of the case as reported. They still, for whatever reason, have the right to the opposition of the Justice Department's determination, but simply in my appreciation of the facts, as they were, and the data was not recorded in either a sufficient measure for the City's purposes, in which case when I was reading the settlement agreement, led me to question who sets the sorts of standards.

Many of the answers to the questions in my first, second, and third points were about the compliance

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officer or the community liaison. It is the counselor for the DOJ called COCL.

THE COURT: The Compliance Officer/Community Liaison.

MR. CHEVALIER: As I read the settlement, it was he -- since I am a man, this is how I think of him -- who captured my imagination. Every time I began to despair as to the lack of commitment to the stated goals of the agreement, that COCL would sort of appear to me.

THE COURT: I am not following that point. I will give you more time. I don't understand what you are saying on that last point.

MR. CHEVALIER: May I elaborate?

THE COURT: Please.

MR. CHEVALIER: He appeared to me, since I am a data manager, and this is how I think of him, as sort of a brilliant data manager, someone who has the authority of the Justice Department to request personal interviews, who has got the authority to track and audit and present data to his --

THE COURT: You know that person has not yet been selected. The City a few weeks ago put out a request for proposals or applicants. That person has not yet been selected. So what exactly is your concern with respect to the job description of the COCL?

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MR. CHEVALIER: May I finish? I am sorry --

THE COURT: In my opinion, it is a dialogue, and I will give you more time. I want to have a dialogue. I am interested in your points. I just want to let you know what's on my mind.

MR. CHEVALIER: Of course. He would have the tactical expertise of an officer and the ultimate responsibilities of the public. Essentially as I was reading the settlement, he seemed to be all things to all people.

What I am suggesting is perhaps I reflect some of the skepticism that has been expressed in the past few days that suggest that he does not exist. I don't mean simply the position on the City's media site has been filled, but also this person may not or possibly cannot exist. I don't know.

I have concluded, as many of the other citizens present today and yesterday have testified, by various different methods that this person is sort of an inflection point inside of the text, sort of a mythical figure --

THE COURT: Why?

MR. CHEVALIER: I don't mean to suggest that's true. I mean to suggest that was my personal impression, and someone who can hang the collective hopes of all the

parties of the agreement, wronged or otherwise.

I am going to summarize, and then, of course, you can ask me whatever questions you wish.

But it is unfair for me to judge the elements of the plan as harshly, because it has not yet been adopted. Perhaps like data, finding agreements must be adjudicated without prejudice or with sort of a knife necessary to take those arguments at their word and hold all the parties legally accountable to what they promised it could be.

When the DOJ expert witness on police reform testified yesterday, he suggested that only another officer knows what it is like to be in a dark alley. At the time I wish I could have suggested to him that I knew what it was like to be in a dark alley as well. I knew what it was like to have the person who had cornered you there have the full powers and support of the State behind him and knowing that no one was coming to help you.

I think it is possible to infer by looking at me, I have a very particular political ax to grind. As I suggested earlier, this is my first time addressing the Court, and it is my first time at a public hearing. I am not here necessarily because I am a product of the policing tactics of the 71st and 72nd Precinct in Brooklyn or I am a product -- which I am -- or because I am a

product of policing of the Rampart Division of

Los Angeles, which I also am. Nor am I here because I have been drawn down on no fewer than half a dozen of uniform officers when I was a child at nine years. I am nearly 30. I am old for a black person, and these things no longer arouse my anger.

I am here for only one reason -- excuse me. It is because I wish to have children, and my partner wishes to have children. My uncle is autistic and her uncle is autistic. Her little brother is autistic. No one has ever called me autistic to my face, but, Your Honor, I cannot control my facial expressions. I find repetitive tasks soothing, and I do not like speaking in crowds.

THE COURT: Well, you are doing very well.

MR. CHEVALIER: Thank you. I appreciate that, Your Honor.

At present, I am not cruel enough to bring a child into a world where I believe no one is coming to help her or him.

So I would like to conclude by suggesting that I have been watching this court for the past day or so, which is the first day of my political life, and I have listened to Your Honor's statements and questions, and I believe Your Honor to be a person of sufficient depth to shepherd these proceedings to their optimal conclusion,

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whatever that may be. It is for that reason alone that I recommend that Your Honor adopt the settlement agreement in order for it to terminate under your personal jurisdiction for as long as is humanly possible.

Your Honor, may I be excused?

THE COURT: Mr. Chevalier, yes, you may. Those were very articulate comments and very thoughtful. I appreciate you coming here today. Thank you very much.

MR. CHEVALIER: I thank the Court.

THE COURT: Is Ms. S. Jenika here?

MS. JENIKA: Good morning, Your Honor.

THE COURT: Good morning.

MS. JENIKA: I am going to cry before I start talking.

THE COURT: All right. You are welcome to do that, but then spell your last name, please.

MS. JENIKA: J-E-N-I-K-A.

Last winter I saw the award-winning documentary "American Winter." Last winter, I saw "American Winter." It was part of the Northwest Film Festival films. It focused on six families in Portland with various scenes all set in Portland. These families were on the verge of losing their homes, and the franticness and fear of being homeless or living in their car was palpable all through the film.

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Because of that film, I decided to help the homeless. I go out twice a week with clothes and food that are donated to me. Roberto and Joe Walsh, they are among people who donate clothing for me. I go out, and I feed the homeless and provide clothing.

Many times I hear that the police came and took our stuff. These are called sweeps, I've heard. That blanket sometimes is only thing between them and the concrete. The thing is, I just don't understand who is ordering the sweeps, but it is insensitive to do that. I think that the police do not understand the homeless culture.

Because of this, they are insensitive to the needs of the homeless, and they are not reported for this, or maybe they are. Maybe they say, "Yes, we did a sweep." Well, "sweep" sounds nice, like you are sweeping away dirt when you are cleaning your kitchen floor. But that's not what happens when you do a sweep on the homeless.

I worked for the public defender in the '80s as a criminal investigator, and we were always so happy if we got a job from Multnomah County versus Portland, because Multnomah County's police officers had to have a four-year college degree.

THE COURT: The Multnomah County Sheriff's Office.

MS. JENIKA: Yes. Multnomah County Sheriff's Department, whereas Portland PB just needed a high school education. I don't know if that has changed. Perhaps it has. It has been a long time.

So basically I just want to say that the agreement was very complicated to me. I don't understand it totally at all.

But I would like the sweeps stopped, and I would like the Portland Police to have more of a sensitivity to the homeless culture. The police culture is not the same as the homeless culture, and I would like to have more sensitivity to that.

Thank you.

THE COURT: Thank you very much, Ms. Jenika. I appreciate that.

All right. Do we have Kalei Luyben? I think with you is Ann Brayfield; is that right?

Then after that, we will hear from Robert Lovato. Thank you, sir.

Then Sharon Maxwell. Are you here?

And then Tom Muller.

Let me turn to you, Ms. Luyben and Ms. Brayfield. I have received and reviewed your very thorough binder, the "Shooting the Sick" binder. Thank you. I know it began with fairly extensive comments dated

from your December 19th letter. I appreciate that.

MS. LUYBEN: Here is a copy of that.

THE COURT: Is that the same as your December 19th?

MS. LUYBEN: The letter that's behind, yes. The testimony is in front. You can see that I am brief. That's for Your Honor.

THE COURT: All right. Thank you very much. Please spell your last name.

MS. LUYBEN: Kalei Luyben. K-A-L-E-I, L-U-Y-B-E-N.

I am Kalei Luyben. My husband, Ted Luyben, cannot be here at this time. I'm here with my friend Ann Brayfield.

For the past four years we have been working closely together to, first of all, understand the problem of police violence and then to remedy it. We find it pointless to complain, but we find it very beneficial to solve problems.

On December 19th, 2013, we submitted to the Court a research project, which we call "Shooting the Sick." We undertook this project to discover why it was in the year 2010 that the only person shot -- there were six of them -- and killed, five of them, by the Portland Police were persons in crisis at the time.

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It is not possible to score a perfect 100 percent without being intentional. I consider this a shameful statistic. This much, we know.

The reason that we're here today is because the City of Portland is a defendant in a civil rights lawsuit.

The reason we are here today is because the Portland Police Bureau violated the civil rights of Portland citizens by using excessive force.

The reason that we are here today is because the U.S. Department of Justice listened to us citizens and heard what we citizens were saying. Then the DOJ responded by conducting an independent investigation.

The DOJ consulted with experts in best practices, and then the DOJ patiently negotiated a settlement agreement.

But the real reason we are here today is because Judge Simon opened his courtroom to all of us, and I mean all of us. By inviting all of us to speak to him, he has creatively brought all of the parties together to listen to one another insofar as they were willing. The willing are here. This much, we also know.

The PARC report of 2003 at page 48 said, "For the past 34 years no officer in Portland has been indicted for an officer-involved shooting or an in-custody death case." That was in 2003. It is a decade later.

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The zero indictment is a plan; it is not an accident. The consistency shown by the district attorney in maintaining this statistic for four decades indicates to me that exonerating officers has been the plan all along.

The OIR Group report of May 2012, at pages 68 and 69 said, "We also believe it is time for the Bureau and the City to end the 48-hour rule that exists in the current labor agreement. In our view the next time the labor contracts become due July 1, 2013" -- last July -- "the elimination of the 48-hour rule should be one of the primary objectives of any future collective bargaining."

My understanding is eliminating the 48-hour rule did not happen. So exonerating officers is the policy of the City Attorney as well as the District Attorney.

It would seem that the State Attorney General needs to begin investigating both of these offices, and I think we citizens have a lot more work in front of us, but I do thank the work that has been done.

I thank you especially, sir.

THE COURT: Thank you very much. I appreciate those comments.

Ms. Brayfield.

MS. BRAYFIELD. My name is Ann Brayfield. That's Ann with no "E." B-R-A-Y-F-I-E-L-D.

I too want to thank you, Judge Simon, for opening the courtroom and taking testimony from everyone, who as Kalei said, was willing to come forward. Your hospitality is notable. I really appreciate it. I think it has allowed us to listen to one another, because I think you have set a wonderful example for all of us.

One of the questions I have asked over and over the last four years in so many different places and so many different ways is: Where is our humanity? And what I have seen here the last two days is exemplary of our humanity and what can happen when we rest in our humanity.

I think with our fear, whether we are a citizen, whether we are an officer, whether we are involved with the Court, wherever we walk, if we can walk in our humanity, then I think we have an opportunity to turn things around in this community and making it a community where all of our members are safe and where all of our members go home at night and where parents aren't living in the fear of a phone call about one of their children who is not coming home tonight.

That's the place that I walked into all of this four years ago as a mom, hearing about Aaron Campbell and Keaton Otis and knowing that they weren't going to be home with their families that night. And that's when I said I need to step up, and I need to continue to listen. And I

need to listen to be involved. And I need to be encouraging of others to listen to one another and to understand one another because that is our hope. And that is our future. Our future can be rich. And our future is here for us if we will step aside from our fear and if we will join with one another.

I would ask you, Judge Simon, to find a way in your great creativity and wisdom to stay involved in this process, more to the front than to the fallback, because I think we need your example and your model to guide us, to keep us moving forward, because this settlement is not an end. It is only another beginning. We need a different result, and we need to resolve our problems.

So I hope that you can find a way, because I think you have created something in this courtroom the last two days that could serve us all well as we go our separate ways in the ways that we're all involved. You know, whether we sit in the District Attorney's Office, whether we sit in the CRC, whether we sit at the Department of Justice, wherever we sit, citizens in their everyday lives, wherever we sit, we must come together, and we must solve this problem.

Thank you very much.

THE COURT: Thank you very much, Ms. Brayfield. I appreciate those comments.

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Mr. Lovato.

MR. LOVATO: Good morning, Your Honor.

THE COURT: Good morning.

MR. LOVATO: Thank you for having us here to testify. As a background -- my name is Robert or Roberto L-O-V-A-T-O.

THE COURT: Thank you.

MR. LOVATO: As a background, I am Mexican-American, first generation, born in Santa Barbara, California. I moved here seven years ago with my wife. I am a graduate of UCSB and University of Colorado at Boulder.

Because of my background, being a witness of policing in this country, I have paid attention to it over the last decades. I am 67 years old now, so I have seen a lot of things.

But anyway, with no disrespect to the Court or yourself, Your Honor, I am wondering if this is not a dual system of justice, because here we have a plea bargain with the Department of Justice. The settlement absolves -- technically, I guess, absolves Portland from saying that they were guilty of the infractions by the PPB. If I were standing in this place, I don't think that I would have to admit guilt to receive the plea bargain. So I think there is a duality there.

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I have learned a lot from reading the findings, because of all the incidences, things that have happened there and the documentation. I believe that the PPB, because of the decades of the historical record, has a low learning curve. I am wishing that you, Your Honor, would not sign off on this now and would get the Department of Justice to extend this agreement for ten years.

I think the PPB really seriously needs to have all its members understand what the United States Constitution is about, what civil rights are about, and what human rights are about. The human rights comes into question in the use of the ECWs, because I consider the overuse of that to be breaching of the proper use of this equipment as torture.

I understand how the DOJ chose to narrow the settlement, but there is a lot of history, as I say, like four or five decades in Portland, of police abuse. There is also a record of decades of reform. My largest fear here is that if you okay the document now and start to work on it, that the PPA as part of the settlement, even though they agreed to it, they will step in, as examples in former reforms, have stepped in to set aside the reforms.

THE COURT: I'm not following that point, sir.

MR. LOVATO: Well, currently "The Old Guard" of

United States are trying to destroy every union in this country. The only unions standing are unions that are Police Associations, because they protect the police officers. I don't know what the legal ramifications are or how that system works, but I personally witnessed -- well, I have read how the PPA can use the bargaining rights of the state labor commission or the national labor commission to set aside implementation of certain things. I just call this generally into question.

THE COURT: Thank you.

MR. LOVATO: Currently, I have another suggestion for the DOJ that the -- I read the Los Angeles Times. The police district in Southern California has implemented the use of individual video cameras to document the police officer's personal camera to follow him during his daily regimen or his period of work. They actually set back abuses because the knowledge of the camera being there on realtime shows what happens, and it can be used as a toll for the prosecution.

THE COURT: That is being done in Los Angeles?

MR. LOVATO: Yes. I think in a county east of Los Angeles. I'm not sure which one, but I read that in the LA Times.

Another demarcation point is 9-11-2001, the infamous day in New York. Policing in America changed. I

feel that policing took a more quasi-military form, and the approach became, not as community-based policing, but as a strategic, tactical implemented policy. I think this disrupted the normal policing approach and much more seriously than when we rejoined ATF here, the might that I feel became that of a military squadron when they went out on their mission. Because when they went out on mental health calls, you --

THE COURT: You can have another two minutes.

MR. LOVATO: -- when you look at Aaron Campbell, you came into the situation with tactical force, came in with sharp shooter. The fact that the sharp shooter broke policy and took his earpiece out to the command and took the shot on his own is a clear violation of protocols.

I think that permeates Portland PPB. And with all the systemic findings of the Justice Department findings that was mentioned before -- the systemic breakdown and the noncompliance and the bad supervisory situation can lead to deadly force. It has got to be really, really serious. That's why I think it should be extended.

THE COURT: I appreciate that. I understand that.

MR. LOVATO: I think that's probably all I can say right now. I thank you very much.

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THE COURT: I thank you. I appreciate those comments.

Ms. Maxwell. Then after Ms. Maxwell, we will be hearing from Tom Muller, Donna Lewis, Angela Hammit, Mark Kramer from the National Lawyers Guild, David Whitfield and Barry Sutton.

Good morning.

MS. MAXWELL. Good morning, Your Honor. I am Sharon Maxwell. M-A-X-W-E-L-L.

Before I make my statement, Your Honor, I just want to comment on yesterday's court hearing and some of the questioning that you had for some of the witnesses, specifically the testimony from the expert for the Department of Justice in that you asked him how long the agreement should last, and there really wasn't -- I didn't feel there was any conclusion. But as a business owner, we're told that we should keep our records for seven to ten years. When you do a SWAT analysis, we have a threat at hand, and I would make a recommendation to the Court that the settlement agreement, based on implementation and the planning, needs to go as far as ten years, if not more, and that the judge himself would stay at the front of this based on these two documents right here, the Declaration of Independence and the Constitution.

Fourteen years ago I was able to make a visit to

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our nation's capital, because I wanted to be able to witness for myself what this country is supposed to be about -- fairness for all people. Your Honor, forgive me, but we are here because of human rights issues, civil rights issues. For 50 years I have witnessed personally in this community the abuse of power of the City, which has allowed the police to torment, harass, and act in their own authority. It is not okay. It is not okay.

I am a candidate for City Council, Your Honor, running for a Position 2 against Nick Fish. It is time for change, and it is time for this United States of America and the Court, where we are all sitting, to rise up to be what it should be for the sake of the People, not for those who just exercise authority, but for those who say they represent us, the People, Your Honor. And you have that authority, along with the Department of Justice, who have brought us all here today.

We are summoned at times of birth, at times of death, but also because of times of injustice. We are here today to make what has been wronged right. We have to step up for the sake of all people to have a quality of life.

Now, I will read my statement.

We need our City and Police Bureau to represent the fairness, the quality of life that each person has a

1 right to under the Constitution and the Declaration of
2 Independence. The Nineteenth Amendment gave women the
3 right to vote and exercise their democratic right, whereas
4 our very own city auditor gave recommendations in a report
5 to the Council and the mayor over nine months ago, and
6 they waited and waited and waited and took no action,
7 showed no leadership, took no courage to stand up for the
8 position that they all have been given as elected
9 officials to represent the People.

10 "The Police Bureau," as cited in The Oregonian,
11 "is an organization within the City," the auditor said,
12 "that must have the eye of all the City officials on it,"
13 the auditor said, "noting that the City must ensure the
14 Bureau's training and policies meet the community
15 standards."

16 Your Honor, I would recommend that out of this
17 settlement agreement that allocations of dollars go to the
18 organizations that have stood on the forefront of this as
19 well, the Portland Unitarian Church, the AMA Alliance, and
20 the other social justice fighters who have stood up for
21 the People, Your Honor.

22 The AMA should have the direct position on
23 communications and authority for the purpose of oversight
24 and for the compliance position as far as the role and
25 responsibilities with the Court throughout the settlement

1 time. It makes no sense to eliminate upfront the very
2 voice who has stood for the quality of the life of the
3 people in this city.

4 Keep open the settlement until the position is
5 hired for, both the allocation process defined and
6 determined to ensure that the process has full disclosure
7 and accountability to the very citizens that it will
8 impact, and the public will be able to track and monitor
9 the processes and that they stay open and fair upon
10 implementation.

11 We must make sure that once the DOJ is gone,
12 which I hope they don't leave the city of Portland, and
13 the presentation of exercising their authority, as well as
14 the federal guideline, Your Honor, your authority as well,
15 which we look to you to do, and the recommendations is
16 that they will be implemented upon the settlement,
17 Your Honor.

18 Thank you.

19 THE COURT: Thank you very much, Ms. Maxwell,
20 for those comments.

21 By the way, I will observe, the plaintiff in
22 this lawsuit, the Department of Justice, the United States
23 is really the plaintiff, is represented both by the U.S.
24 Department of Justice Civil Rights Division in Washington,
25 D.C., but also by the U.S. Attorney's Office for the

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1 United States Attorney for the District of Oregon, and
2 they are not going anywhere. Frankly, I expect the
3 Department of Justice Civil Rights Division will be back
4 periodically too under the settlement agreement if it is
5 approved.

6 I do want to acknowledge that it is not just the
7 folks in Washington, D.C., but it is also the United
8 States Attorney's Office who are representing the
9 plaintiff in this case.

10 MS. MAXWELL: Great. We want to make sure that
11 is for the settlement and that the representation for the
12 people is held to a high standard.

13 THE COURT: Thank you very much, Ms. Maxwell. I
14 appreciate that.

15 Mr. Muller, welcome.

16 MR. MULLER: Thank you, Your Honor. My name is
17 Tom Muller. M-U-L-L-E-R.

18 The non-compliance agreement is inadequate to
19 solve the problems identified in the complaint, but
20 because of a five-minute oral testimony time limit, I am
21 going to identify only one: Inadequate hiring practices
22 in police recruiting and hiring.

23 Specifically the criteria in which Portland
24 police officers are hired must be changed to ensure the
25 proper implementation of the non-compliance agreement.

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1 The hiring of police personnel is primarily from
2 men and women coming back from the wars in Iraq and
3 Afghanistan. Statistics have shown that the majority of
4 these returning military suffer from post-traumatic stress
5 PTS.

6 Yet most of the hired Portland police officers
7 is -- and has been for many years -- been from these
8 returning soldiers. No one is more thankful to our young
9 men and women who have served their country than I. And
10 in most cases of employment hiring, they should continue
11 to get job preferences, but not as Portland police
12 officers.

13 The non-compliance agreement must include new
14 rules for police hiring and be implemented. Hiring must
15 not be done from returning troops, who often need much
16 help with mental and emotional and physical challenges.
17 Yet this is where most of the police hiring is taken from.
18 This is insane beyond comprehension.

19 You take away a gun from someone who has a good
20 probability of having post-traumatic stress and give them
21 another gun, a badge, and another uniform and send them
22 out into the community and tell them: This time you are
23 defending your city, not your country, and give them a
24 Glock 9-millimeter revolver and tell them: Only use
25 excessive force only if you feel it is necessary.

1 I believe that this flawed hiring practice is
2 one of the major reasons the Portland Police have failed
3 the City of Portland, not to mention the millions of
4 dollars which the City can no longer afford to lose in
5 lawsuits and out-of-court settlements.

6 Can we continue to blame the entire pattern of
7 excessive force against mentally ill or those who are
8 perceived to be mentally ill on officers alone when there
9 is a good chance that that officer might suffer from
10 post-traumatic stress disorder? The only difference could
11 very well be that one is mentally ill or perceived to be
12 mentally ill, and the other carries a Glock 9-millimeter
13 revolver and possibly has PTS. Our young returning
14 soldiers need our help, not another gun and another
15 uniform.

16 Thank you.

17 THE COURT: Mr. Muller, can I ask you a
18 question? You raise some very serious issues, and I agree
19 that anyone who is suffering from post-traumatic stress
20 disorder or has other problems like that should not be
21 given a gun and placed among our community. That said,
22 and here is my question, is it fair, is it right to take
23 someone who has honorably served our country in the armed
24 forces, and when they come back and they want to serve the
25 community as a police officer, to automatically disqualify

1 them from doing so?

2 MR. MULLER: Here is the problem as I see it,
3 Your Honor: Statistics have proven that the majority of
4 our returning soldiers do suffer from PTS. Now, the
5 majority of the hiring from the Portland Police Department
6 are from that same group of returning soldiers. So I see
7 a direct connection/correlation between the two.

8 I think our returning soldiers should get job
9 preference in hiring. I believe that fully. I have so
10 much respect for our young soldiers who have defended
11 their country honorably. But the problem is when you have
12 soldiers that are returning, the majority have these
13 problems, and yet this is where most of the hiring is
14 done -- from that group of returning soldiers.

15 So all I'm saying is, these returning soldiers
16 need to be seriously evaluated by somebody who has
17 training, psychiatric training, to make sure that we don't
18 give a gun to somebody who has a psychosis from the wars.

19 THE COURT: Thank you. You raised very
20 important but difficult issues and questions.

21 Thank you.

22 MR. MULLER: Thank you.

23 THE COURT: Ms. Lewis. Welcome.

24 MS. LEWIS: Good morning, Your Honor. Good
25 morning, DOJ.

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1 THE COURT: Spell your last name, please.

2 MS. LEWIS: Donna Lewis. L-E-W-I-S.

3 I appreciate the opportunity to come back today
4 to make my statement, and I understand that you have read
5 that statement that I've submitted, so I won't repeat
6 anything in there. However, I do have some comments that
7 have changed since coming here yesterday.

8 THE COURT: Very good.

9 MS. LEWIS: The first thing I want to bring to
10 your attention is there is present in the police of the
11 City of Portland a common disrespect for human rights.
12 The Constitution was mentioned. I don't know what they
13 are sworn in to do, but I'm sure it doesn't have anything
14 to do with taking anything from homeless people. I don't
15 understand that.

16 The other thing I would want to make known: How
17 can you police our community when you are so far removed
18 from the needs of the community?

19 THE COURT: What do you mean by that?

20 MS. LEWIS: I mean, for example, people who are
21 suffering with mental illnesses. How do you know that if
22 you are not involved in that community? Your only reason
23 for being there is to police the community. That's what I
24 mean by that statement.

25 The other thing I would like to bring up is

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1 regarding the settlement agreement, it appears to be a
2 lack of community involvement and social inclusion. There
3 seems to be a lack of that.

4 Previous statements made. There is a high
5 percentage of incarceration of mentally ill community
6 members. I'm not saying that there are those that
7 shouldn't be incarcerated, but I'm saying that there is a
8 high percentage of those that have mental illnesses.

9 Regarding the settlement agreement, what about
10 that walk-in? When is the right time to discuss that?
11 When is the right time for the powers that be to make that
12 happen? You have the statistics of those that have lost
13 their lives. So isn't a life important, especially when
14 it has been taken unjustly?

15 And the last thing I would like to state is that
16 yesterday it was mentioned that if the settlement
17 agreement is not approved, it may not materialize again;
18 that it may disappear. What about human rights? What
19 about human life? That doesn't disappear. If this
20 settlement agreement is not approved, human rights do not
21 disappear. So why does that have to disappear?

22 So this is the City of Roses. Are we to watch
23 out for those thorns now?

24 THE COURT: I like that.

25 MS. LEWIS: I am a student at Portland State

1 University. I am here because of a class internship. I
2 am a volunteer with the AMA Coalition, and I will tell you
3 that I am looking forward to what you are doing. You are
4 going to fulfill your job description.

5 THE COURT: Here is what is happening. Let me
6 answer that. There will be a transcript prepared of
7 everything that folks said yesterday and today.

8 MS. LEWIS: Yes.

9 THE COURT: I am expecting that that transcript
10 will be ready no later than Monday, March 3rd.

11 MS. LEWIS: Before finals. Thank you.

12 THE COURT: March 3rd. What I haven't figured
13 out yet, and I was going to talk to counsel. Perhaps it
14 might be to place an electronic edition, a PDF copy,
15 either on the Department of Justice's website or the
16 City's, maybe the Court's. I'm not quite sure the most
17 efficient way, but it will be available, maybe all three.
18 But my expectation is that it will be available no later
19 than March 3rd, thanks to the very dedicated and hard work
20 our official court reporter. Well, frankly, we have two.
21 Because of the efforts here, we have two people coming in
22 and alternating.

23 MS. LEWIS: Thank you. Job description was
24 mentioned. Police Bureau job description.

25 Thank you very much for your time.

1 THE COURT: Thank you very much, Ms. Lewis. I
2 appreciate it. Good luck on finals.

3 MS. LEWIS: Thank you.

4 THE COURT: Ms. Hammit, followed by Mr. Kramer,
5 Mr. Whitfield, and Mr. Sutton.

6 MS. HAMMIT: Good morning. My name is Angela
7 Hammit. H-A-M-M-I-T.

8 Thank you very much for this opportunity to
9 speak and thanks to the Department of Justice for making
10 it happen.

11 First of all, a little bit about myself. I am a
12 middle American mom. I have never been in trouble with
13 the law. I have never had any diagnosis of mental health
14 issues.

15 Since coming to Portland four years ago, I
16 became a political activist, a human rights activist, and
17 I have been abused by the police, Portland Police, and
18 Department of Homeland Security. I still have injuries
19 I'm dealing with, a broken leg, an injured leg. I have
20 been recently diagnosed with post-traumatic stress
21 disorder caused by the Portland Police. So they are not
22 only abusive to the mentally ill, but they are creating
23 them.

24 THE COURT: Do you want to tell us the story of
25 what happened?

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1 MS. HAMMIT: Which one?

2 THE COURT: It is up to you.

3 MS. HAMMIT: It began with Occupy Portland and
4 standing up for my constitutional rights to address our
5 government with our grievances, and I was injured. The
6 Independent Review Board, I filed a complaint with them.
7 They sent it to Internal Affairs, but we're still going to
8 court 27 months later. So I don't even know if that is
9 going to work. They took my property. They injured me.
10 I don't want to talk about it.

11 THE COURT: Okay.

12 MS. HAMMIT: I do know the mental health people
13 that are riding with the police, I have experienced that
14 myself with Benjamin Pickering. I kind of took him under
15 my wing when I found him tossed out of the police station
16 after one of his arrests and beatings.

17 I called Cascadia trying to find help for him.
18 I called all of the resources I knew of trying to find
19 help for him. And finally, weeks later, the mental health
20 people came, but they jumped out of a police car. I felt
21 threatened. I didn't know who they were. The police
22 are -- I see them and immediately my heart starts racing,
23 and I start having an anxiety attack. Rather than feel
24 those things, I turn them into anger, which gets me in
25 more trouble with them.

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1 But just the fact that person was coming out of
2 a police car with the police, I didn't trust her, and I
3 was scared for Benjamin, because they took him. They took
4 him away from me. I didn't know if I was going to see him
5 again. I didn't know what was going to happen.

6 So with that, that's not -- I don't see any
7 accountability, and I'm sorry that my mind is jumping
8 around, but that just happens with anxiety and
9 post-traumatic stress disorder.

10 I just wanted to -- there are a lot of human
11 rights being violated out there, and I don't see any of
12 this agreement touching on the people. It sounds good,
13 looks good on paper, but on the streets and where the
14 violations are happening, I don't see anything that's
15 going to help with that.

16 Thank you very much.

17 THE COURT: Thank you very much, Ms. Hammit. I
18 appreciate it.

19 Mr. Kramer, for National Lawyers Guild.
20 Welcome. Thank you for your written comments. I've read
21 them and appreciate them.

22 MR. KRAMER: My name is Mark Kramer. I am a
23 member of the National Lawyers Guild.

24 THE COURT: K-R-A-M-E-R.

25 MR. KRAMER: That's correct. I have been

practicing since 1981 and a member of the National Lawyers Guild since my law school days in late '70s and early '80s.

In the last two years, I have litigated two excessive force cases, one in this courthouse and one recently in Medford before Judge Panner. The Portland chapter of the National Lawyers Guild has been working on improving oversight of the Portland Police for more than two decades, and I have been involved in that for that time.

Currently our members regulate Council and represent victims of police misconduct in the IPR and CIC process and in criminal and civil litigation.

In 2000 -- this history is, I think, important to you, Your Honor. The National Lawyers Guild joined with 17 other stakeholders, many of whom are here today as part of Mayor Katz' workgroup. After several months of study, the workgroup, by majority of 12 to 6, recommended the establishment of a Civilian Review Board with subpoena power and the power to recommend but not impose discipline for police misconduct.

The majority of the report, that is, the Mayor Katz' workgroup report, was discarded by the Mayor, and from its ashes rose the dysfunctional PIIAC system. That, in turn, was replaced by IPR, which was indeed a

modest improvement, but as noted by many speakers, continues to be dysfunctional.

In 2010, Mayor Adams convened a stakeholder group. We issued 41 recommendations. The AMA was part of that; the Lawyers Guild was part of that. The vast majority of those recommendations, I believe all but three, were ignored by the City of Portland.

So I want you to understand that we come from this from decades of experience, and it makes us very wary about the City's commitment to reform police practices.

I want to talk to you about some specific and broad-based concerns. We are a member of the AMA Coalition, and we share all of the concerns that were articulated, but we do part with them on what the Court should ultimately do. We do urge the Court to reject the agreement as it is currently constituted.

As an overall matter, we recognize the agreement as an attempt to bring systemic change to a troubled system. However well-intentioned the provisions are, some of which will have positive and beneficial effects, particularly in the mental health system, triage and so on, the agreement does not go far enough in the areas that it is most necessary to do so in order to effect true change.

In terms of training and policy, the agreement

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fails to go far enough to address PPB's historically problematic training and policymakers. For years, the Bureau's training did not match its policy. Now, in an effort to get policy and training to be consistent, the Bureau has rolled out a new use of force policy and began training even before the policy was finalized.

We are specifically concerned that the agreement does not mandate individuals with relevant life experiences -- and this has been echoed by many speakers -- participate in the development and implementation of training. This would go a long way to increase the efficacy of such training.

Advocates for the mental health community, as well as community advocates, have provided specific feedback to DOJ and the City for years, but the agreement fails to guarantee that those with experience with mental illness play a critical role in the delivery and the implementation of training with regards to police/citizen interactions with those citizens with mental health issues.

Likewise, the agreement does not mandate participation of those with such experience in the development or view of the policies.

In addition, the annual report required by the agreement should require that the PPB solicit and include

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comments from the community. That's at paragraph 150.

For the reasons stated above, the agreement fails to address the longstanding concerns with PPB's policy and training.

As to IPR and the Citizens Review Committee, the agreement fails to address longstanding concerns regarding what DOJ acknowledges is the City's Byzantine and largely ineffective oversight system. The proposed changes shorten the timeline that IPR and CRC have to resolve a case and give the CRC an entirely volunteer effort with minimal financial and infrastructure support.

I understand that there has been some modification and some elasticity regarding those timelines, but we still believe it is unrealistic. Members of the CRC have come out strongly against at least the previous unrealistic timeline.

Most importantly, the IPR created in 2001 passed the authority to conduct independent investigations and has not exercised its authority to investigate in-custody deaths, shootings, and serious incidents of use of force, or for that matter any incidents at all, save one, and that was an internal matter.

The agreement is vague in its direction that IPR be able to conduct meaningful investigations at paragraph 128.

For this agreement to be adequate, it should mandate that IPR conduct independent investigations into significant use of force cases. That is what the stakeholder group recommended; that's what the City has ignored to date.

The agreement should direct the City to fund IPR to perform that function, and that means staff and resources.

The agreement addresses IPR only at its margins, the redundancy of witness interviews, rather than the important thing, which is IPR's authority to conduct meaningful and independent investigations.

I know you have been involved in the issue of IPR's ability to compel officer testimony and the effect on collective bargaining. We have provided the City with the research and the legal opinion which supports the position that the City is able to mandate officer cooperation in IPR interviews. That's not a subject of mandatory bargaining, but the City has declined to exercise that authority. Instead, we continue with this Byzantine process of having a PPB member in the room during IPR interviews to direct officers to answer questions.

The new process creates the appearance and, in some cases, perhaps the reality of undue influence. The

point I'm trying to get across to Your Honor is, after doing this for 20 years, the community has to find the review system credible, accountable, and transparent. Nothing in this agreement, or little in this agreement, enhances that.

The agreement, rather than addressing some of the fundamental problems with IPR, like resources, like independent investigations, merely directs the City to develop a plan to enable meaningful investigations. Yet we spent months and months with Mayor Katz' group. We spent months and months with Mayor Adams' workgroup. We have made these recommendations, and they have not been effective, and so we're doubtful now. We have been fighting for 20 years without meaningful reform.

Without a concrete and express mandate that IPR conduct independent investigations and be provided the resources to do so, there can be no accountability system that will be accepted as credible by Portland residents. As such, the City's plan, as set forth in the agreement, will inevitably fail, like PIAC failed, like IPR is failing.

I know the City told you yesterday: Well, our stats are down; people are making less complaints, deducting as a sign that the issue of abuse is reduced. I submit to you that, because the system is not transparent,

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it is not accountable, it is not effective, it is not credible, that is the reason why people do not use the IPR system.

I myself will rarely, if ever, recommend that a person comes into my office use the system except for minor complaints, like use of profanity and those type of things. I just don't believe it is credible.

THE COURT: How do we then measure whether we will be or not be improving the system or achieving success or better results?

MR. KRAMER: I will give you one example, Your Honor. One example that I believe the stakeholder group made, which was rejected, or at least not adopted by the City. When a complainant goes in to make a complaint, they are given two options: Do you want your investigation to be handled originally by IA, knowing that you have the appeal to the CRC, or do you want IPR to do an independent investigation?

We ask that that be put in as a measure of the public's temperament and what they want and also as a measure to indicate what kind of resources would we need to fund IPR and to make it an effective system. That is one example to enhance that system.

Another example is in the CRC process, which itself is very, very difficult. We have volunteered

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ourselves as advocates, but we do not have the same rights as a lawyer in a due process hearing. So we are there as a supporter, as a facilitator of the complainant, but we don't have the rights to cross-examine. We don't have the rights to discovery. We have limited rights to add evidence. It is a very, very difficult process. So those are just two examples about how the system itself could be improved to make itself credible.

One of the most serious problems that continues under the agreement is it leaves the use of serious force; that is, in-custody deaths and shootings, outside the IPR system. If the IPR is to investigate these cases, the agreement must ensure that there must be recourse for family members to review the incident.

The DOJ has pointed out that family members can sue in federal court. This misses the point. Many people do not use the legal system for a number of reasons, including cost. I think most of the practitioners who bring these 1983 cases will take maybe one out of a hundred cases, because of the costs and complexity, and the difficulties.

Most attorneys don't have the staff and resources to litigate such cases. The IPR was created to provide an administrative avenue for accountability for inappropriate uses of force and other police misconduct.

1 A lawsuit will rarely, if ever, result in discipline of an
2 officer. Yet through the IPR and CRC process, the
3 opportunity for accountability is cast more widely than an
4 action for damages.

5 We realize the irony of police misconduct
6 lawyers taking this position, but we truly feel that many
7 community members will be better served by an oversight
8 and accountability system that does not rely on expensive
9 and time-consuming litigation, which can result in a money
10 award, but no change in policy.

11 Because the proposed agreement fails to address
12 these issues, the community will continue to have little
13 faith that there is true oversight over deaths in custody,
14 over significant excessive force cases, and continue to
15 doubt accountability and independence.

16 As a final note on the oversight process, the
17 proposed agreement codifies a deferential standard of
18 review for the CRC. We addressed this in the stakeholder
19 group; the City ignored it. The CRC uses a reasonable
20 persons standard, a standard that has been roundly
21 criticized as overly deferential for an appeals body. The
22 standard of review should be the commonly understood
23 accepted and transparent preponderance of the evidence.
24 Everybody understands what it means to cross the 50-yard
25 line. It is a clear and understandable standard.

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1 transparency. That's why you have this process,
2 Your Honor. It is transparent. The CRB consists of five
3 to seven members, depending upon whether it is reviewing
4 performance cases or excessive or deadly force cases.

5 The DOJ has found it "curious," I put that word
6 in quotes, that a complaining civilian, if one is involved
7 in an incident, is not permitted to attend the review
8 board's presentation. Yet the agreement fails to allow
9 the complainant, who is the victim of a use of force, to
10 participate or attend these hearings. I hope you
11 understand why people are so frustrated with the system,
12 when you can't even attend the hearing in which the
13 officer may be disciplined for alleged misconduct.

14 The findings are made public by the review board
15 and can be appealed to the CRC, but the complainant
16 continues to be at an extreme disadvantage for not being
17 privy to discussions about why the event was in or out of
18 policy. In addition, if the incident results in death,
19 the surviving family members are left without recourse to
20 appeal to the CRC. These processes should be made more
21 transparent and at the very least should include
22 participation of affected community members.

23 Under the agreement, both the Police Review
24 Board and the CRC can ask Internal Affairs or IPR to
25 conduct more investigation on a misconduct claim in order

1 In other words, the CRC should not be required
2 to defer to the city decision-makers' interpretation. So
3 long as there is that deferential standard, the system
4 will never have credibility in Portland.

5 We have students representing CRC -- I say
6 "representing" in a loose sense -- complainants in these
7 hearings. We have seen the CRC members struggle with the
8 degree of deference that they must afford to the City.
9 Such confusion would be avoided with a preponderance of
10 the evidence standard.

11 The City itself hired expert Eileen Luna
12 Firebaugh to review the IPR in 2008. Her report made a
13 specific finding, that the reasonable person standard is
14 too complicated and that the CRC should be able to make
15 their recommendations to the Bureau based upon the
16 preponderance of the evidence. The City ignored its own
17 expert. The City ignored the stakeholder group. This is
18 another example where the public does not accept the
19 current police accountability process as credible,
20 unbiased, meaningful, or effective, and the agreement does
21 little to alter these shortcomings.

22 With respect to the Police Review Board, the
23 agreement does not address the lack of transparency in the
24 review board hearings, and it does not allow community
25 members to attend the hearings. We are talking about

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1 to generate meaningful findings -- that's at paragraphs
2 132 and 136 -- but these sections only require the
3 investigating entity to make reasonable attempts to
4 conduct additional investigation within ten business days
5 or provide a written statement why additional time is
6 needed. The agreement does not mandate an investigation
7 be completed, does not indicate what recourse the CRC or
8 the IPR has should the investigating body refuse to
9 conduct additional investigation.

10 This is not an unfounded fear. Time and time
11 again we have seen less than adequate responses from IA,
12 and this agreement does not address the problem. We agree
13 with Copwatch, that the agreement should mandate that when
14 IPR or CRC requests more information, a response is
15 mandatory.

16 Finally, with respect to the enforcement and
17 oversight of the agreement, as you know, the agreement
18 calls for the City to hire a Community Officer/Community
19 Liaison, the COCL, to oversee the implementation. This
20 officer is tasked with oversight responsibility,
21 collecting and analyzing voluminous data, and chairs the
22 COAC. Yet this officer has no means to communicate
23 directly with the Court about the agreement, but is in
24 theory the expert on the agreement.

25 Your Honor, if you do nothing else, if you

1 choose to accept the agreement and do find that you have
2 authority to direct the parties to alter the agreement
3 before your final acceptance, we urge you to appoint an
4 independent monitor which is accountable to you, the
5 Court, rather than City Council who will ensure compliance
6 with the agreement. We ask you --

7 (Audience applauds.)

8 THE COURT: Excuse me. Folks, please do not do
9 that. I need to focus and concentrate on what the speaker
10 is saying, and I find that very distracting. You are
11 welcome to express your opinions, if you haven't already
12 spoken. But please do things like that outside of this
13 courtroom.

14 Mr. Kramer, I am sorry. Please pick up where
15 you left off.

16 MR. KRAMER: We ask you to follow the lead of
17 New York's Mayor de Blasio, who did accept Federal
18 District Court Judge Scheindlin's recommendation for such
19 a monitor in enforcement in the New York stop-and-frisk
20 case.

21 Whether or not you believe objectively,
22 Your Honor, that a monitor reporting to you is necessary,
23 given the COCL and COAB, the point I'm trying to make, and
24 the point, I think of the last two days, the citizens
25 deserve a credible system. They will not trust the

1 system, as currently constituted in the agreement, as
2 credible.

3 Finally, we urge the Court to grant the AMA
4 Coalition the authority to bring issues about the
5 implementation agreement directly to you. I thank you for
6 your time, and I am happy to answer any questions that you
7 have.

8 THE COURT: Thank you very much, Mr. Kramer. I
9 found that very thorough and helpful. I appreciate your
10 comments and time.
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1 (Section 8, Court Reporter Jill Erwin.)

2 THE COURT: Mr. Whitfield.

3 Mr. Whitfield, am I correct -- yes. I received
4 and have viewed the video testimony.

5 MR. WHITFIELD: Good. Thank you.

6 THE COURT: That was submitted. I think it was
7 submitted by Consult Hardesty.

8 MR. WHITFIELD: It was.

9 THE COURT: I did review it and found it
10 interesting and appreciate it.

11 MR. WHITFIELD: Thank you, Your Honor. I did
12 that in case I was not able to make it today or speak.

13 THE COURT: Please spell your last name, sir.

14 MR. WHITFIELD: Good morning, Your Honor. My
15 name is David Whitfield, W-H-I-T-F-I-E-L-D. I would like
16 to thank you, sir, for providing this safe place.
17 Criticizing the Portland Police Bureau in public is a
18 nerve-racking experience. I hope this should take four
19 minutes and 55 seconds.

20 My name is David Whitfield, and I am a Portland
21 resident of nearly ten years. I'm a math teacher at the
22 local high school and part of a mixed-race family with a
23 beautiful African-American partner of some 29 years and
24 two children.

25 I'm here, sir, to quite specifically ask you to

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1 refer the case of Keaton Otis back to the Department of
2 Justice and to the FBI for a credible and fully
3 transparent investigation under the auspices of your
4 court, sir.

5 Not many parents of --

6 THE COURT: Let me also tell you. This won't
7 count for your time. I did receive your notebook "Justice
8 for Keaton Otis." I think it came in yesterday.

9 MR. WHITFIELD: It did.

10 THE COURT: I have not had time to review it,
11 but I will.

12 MR. WHITFIELD: I would have been very surprised
13 if you would have. It's over 20,000 words.

14 Like many parents of black children in Portland,
15 instead of feeling confident that police officers will
16 care for the safety of my children, I'm sad to say that
17 certain -- some, I repeat "some," of Portland's police
18 officers may be causing harm to my children.

19 The first settlement focuses on the Bureau's
20 past woeful attitudes about excessive force towards people
21 suffering from mental illness in personal crisis, but
22 faith value, this is to be welcomed. I would argue it's a
23 missed opportunity. You cannot be colorblind about issues
24 of mental illness. You certainly cannot be colorblind
25 about policing in Portland.

1 The DOJ's lack of focus on the predominantly
2 white Bureau's relationships with Portland's people of
3 color is to be regretted. If anything, it is this
4 relationship that needs close scrutiny.

5 To ignore this reality and to remain in denial
6 will not make the fundamental culture of races among a
7 significant number of police officers -- not all officers,
8 but a significant number of police officers -- go away.

9 Indeed, ignoring it will allow it to fester and
10 to grow. The instances of racist violence following
11 racial profiling are just too numerous to be dismissed.
12 The black university student beaten up for being no more
13 than a bystander, the unarmed black man shot after he had
14 disarmed, in his own defense, and attacker armed with a
15 gun, Aaron Campbell, shot while walking backwards, hands
16 on his head, under police command. And, of course, Keaton
17 Otis, my focus today.

18 The names of the same officers we have heard
19 repeatedly. There are not many of these officers, but
20 they are there.

21 Keaton Otis was a young black man killed by
22 seven police officers in the rush hour just yards from two
23 main roads in a frenzy of 32 shots. One witness who stood
24 on the corner as this was all happening, just after
25 6:20 in the evening, a warm May evening, with cars and a

1 bicyclist and at least one motorcyclist passing by, said
2 it was hysteria. That witness was, of course, not called
3 to the grand jury. And so I would like to bring to your
4 attention I'm pleased with your considering putting all of
5 this in an electronic form in a transparent and open way.

6 I wish the District Attorney had done so with
7 the transcript of the grand jury. Which is no longer
8 available on his website, but is available on "Justice for
9 Keaton Otis." A paucity of officers, some with records of
10 violence against people of color, including the instances
11 I've given you here, they quickly converged on the scene.

12 Some of those same officers have met with the
13 officers directly involved barely an hour earlier in a
14 coffee bar, barely a mile away, and that coffee bar is
15 barely a mile away from here.

16 They made every effort to stop the Bureau's
17 Strategic Emergency Response Team from becoming involved.
18 Taking control of the crime scene perimeter, body in the
19 beginnings of the investigation, in a cruel bean-bagging
20 exercise, which seemed to be for the benefit of a person
21 who was video camereaed -- videoing this. Bizarre.
22 Bizarre.

23 All of this, sir, this is the important point I
24 wish to make, was on the day that Portland civil authority
25 had attempted to bring some control over this armed force

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1 considered by many to be out of control. The mayor had
2 sacked the police chief that day, and that police chief
3 had only one month previously taken direct control over
4 the team that killed Keaton Otis. I'm not implying that
5 she was involved in that killing.

6 I believe this time cannot be discounted. The
7 statements from all of the officers involved support that.
8 The sacking of their chief was clearly very much on their
9 minds. They say that in their statements. Too short to
10 detail the many inadequacies and many inconsistencies in
11 the investigation in the grand jury.

12 If you invite me, I'm happy to stand here for
13 hours and go through them.

14 THE COURT: I may not take you up on that right
15 now.

16 MR. WHITFIELD: Yeah, you certainly can, sir.

17 THE COURT: But I may not.

18 MR. WHITFIELD: Oh, right. Any time. Any time.

19 Violence was done to the name of Keaton Otis, as
20 well as to his body, and I believe it has been
21 consistently done since by the Portland Police Bureau.

22 For the details, I'll say you have the folder.

23 Today, no, not even the officers involved talked
24 of their original justifications for the killing, which
25 are literally in the extreme and to the point of

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1 fantasies.

2 Instead, they claim it was the people of
3 Portland who let down Keaton Otis. Now the focus is on
4 Keaton Otis's mental illness and the tragedy of his death,
5 and, indeed, it was a great tragedy.

6 The stark contrast, though, in the narratives
7 then and now does give light to the function of the
8 original web of mistruths. I don't think we should allow
9 those mistruths to go unchallenged.

10 THE COURT: Do you have much more, Mr.
11 Whitfield?

12 MR. WHITFIELD: I'll speed up.

13 THE COURT: Pardon me?

14 MR. WHITFIELD: I'll speed up.

15 THE COURT: I don't want you to speed up.
16 You're saying the same things you said in the video, I
17 believe.

18 MR. WHITFIELD: Yes.

19 THE COURT: I have watched the video. I have
20 your binder "Justice for Keaton Otis." I will review it
21 thoroughly. May I ask that you make your concluding
22 remarks in the next 30 seconds or so.

23 MR. WHITFIELD: Yes. Certainly, sir.

24 Keaton Otis was shot by officers angry at the
25 Portland Civil Authorities between poses -- its rightful

1 authority. Officers who had lost self-control. While all
2 this remains unacknowledged, not confronted, and the
3 relationships between the good people of Portland and the
4 huge majority of honest officers remain under a dark
5 cloud, justified mistrust.

6 If this settlement is to -- must conclude the
7 parameter of race, as well as mental illness, if it's to
8 be meaningful; otherwise, it is inadequate, and we will be
9 back here again after more violence.

10 If there's to be any meaning of the idea of
11 justice for all in Portland, sir, then the specific case
12 of the killing of Keaton Otis, I believe, needs to be
13 referred back to the Department of Justice and the FBI to
14 a credible and transparent investigation under your
15 auspices, sir.

16 Thank you for your time.

17 THE COURT: Thank you very much, Mr. Whitfield.
18 I look forward to reading the binder you gave me
19 yesterday.

20 MR. WHITFIELD: Thank you.

21 THE COURT: Mr. Sutton, good morning, sir.

22 After Mr. Sutton, I'd like to hear from
23 Crystal Elinski, Eric Terrell, Alan Francis, Barry Joe
24 Stull, and Greg Benton and then Laurie Benoit.

25 Good morning.

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1 MR. SUTTON: Excuse me. Yes. All base their
2 findings on legal precedent. And this was quite a
3 time -- quite a long time ago that it was found that the
4 President of the United States is not above the law. What
5 about our police officers, you see?

6 Now, our police officers haven't been
7 accountable to the law. That doesn't mean that this is
8 necessarily right. I believe, from -- from this
9 finding -- yeah, from this finding, it indicates that
10 these police officers need to be held accountable. They
11 are as accountable as a President of the United States.

12 I have so much to say, and I don't have any
13 notes or anything. I didn't really plan this,
14 but -- excuse me -- but this is -- is very -- I -- I don't
15 know how I can say this. This is so very obvious.
16 It's -- I hope someone here will hear this and understand
17 it, please.

18 THE COURT: Thank you. Thank you very much,
19 Mr. Sutton. I appreciate you coming today and I
20 appreciate you sharing those comments.

21 MR. SUTTON: And if you would want to ask me any
22 questions about this at all? Any?

23 THE COURT: Well, the one question that I would
24 have is from your observations, would -- do you -- what do
25 you believe needs to be done differently in how the

1 MR. SUTTON: Good morning, Your Honor. Thank
2 you.

3 I -- I couldn't help but, having to leave early,
4 hear the mention of John Sirica. And this is part of what
5 I'm talking about. First of all, there needs to be
6 accountability. That's obvious to everyone. But, you
7 see, the police work to -- to make people accountable,
8 but, yet, they shouldn't be accountable
9 to -- they -- they, themselves, see them -- don't accept
10 this accountability. It doesn't -- it doesn't -- it
11 doesn't make sense. Okay. Yeah.

12 Well, anyway, this is a -- this is truly a great
13 problem. There have been a lot of people that have had
14 difficulties in the past. And one person that came out
15 very well a long time ago was -- during the time of
16 President Nixon was John Dean. I thought he did very
17 well.

18 And I -- I would like to get into the past about
19 this. It was a finding of Judge John Sirica that the
20 President of the United States wasn't above the law. And
21 you and this courtroom and the Department of Justice all
22 have their -- their -- their -- all determined their
23 findings on legal precedent.

24 I'm sorry. I'm going so slowly.

25 THE COURT: That's all right.

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1 Portland Police Bureau interacts with homeless?

2 MR. SUTTON: Oh, that's a good question. I'm
3 homeless myself. I went by 12th Avenue and talked with
4 someone that had been rousted out during the cold, and I
5 told Jo Ann Hardesty about it at KBOO. I had someone call
6 her and I told her about this. I was really upset about
7 it. And I -- as I understand it, they're dealing with the
8 cold. I'm -- I have shelter a lot of the time. They're
9 dealing with the cold, and yet they have this with the
10 police.

11 The police are here for our protection and our
12 assistance. For all of society. This is the way I see
13 it. And if those people don't see themselves accountable
14 to our justice system, it seems that their authority
15 is -- is devaluated. I hate to see that, but that's the
16 way it is.

17 THE COURT: I understand.

18 MR. SUTTON: And I -- I -- I know that this is
19 so very important and that I'm not -- it seems like I'm
20 not putting it across as well as it could be, but it --

21 THE COURT: You're doing fine.

22 MR. SUTTON: Okay.

23 THE COURT: Thank you very much. I appreciate
24 you coming here, Mr. Sutton.

25 MR. SUTTON: Thank you. Thank you, Your Honor.

1 THE COURT: Ms. Elinski? I apologize if I'm
2 mispronouncing your name.

3 MS. ELINSKI: That's correct.

4 THE COURT: I'll still ask you to spell it.

5 MS. ELINSKI: E-L-I-N-S-K-I.

6 THE COURT: Thank you.

7 MS. ELINSKI: It's Polish. Here's a red pen for
8 all the teachers out there, teacher strike; student
9 strike.

10 Thank you, Barry. Barry is one of my everyday
11 heros. I still think TriMet should name that new
12 pedestrian bridge off of -- on -- on Working Kirk, and it
13 turns out he got the most votes, so, I don't know, let's
14 talk about democracy.

15 Your Honor, I submitted one of the forms
16 recently, and I don't know if you've had a chance to look
17 at it.

18 THE COURT: You know what? I may have, but it's
19 not on the top of my head.

20 MS. ELINSKI: I start it off with: It was a
21 typical day in Portland -- in north Portland.

22 THE COURT: I have an index by names. Just one
23 second.

24 MS. ELINSKI: That's all right. It's -- it's
25 just another typical day. It happened on the day I was

1 going to the Albina Ministerial Alliance hearing
2 preparation meetings, and -- and it was -- it hit me how
3 this is -- this is a part of our lives here in Portland.

4 We see this sort of thing happen every single
5 day. The profiling of young men on the street, my
6 streets, my neighborhood, and -- and the waste -- the
7 huge, enormous waste of resources.

8 And so the answer to the question is do we
9 accept this -- this agreement, this settlement, is no.

10 THE COURT: Why?

11 MS. ELINSKI: Because it's another thing about
12 throwing money at the problem, which we've been doing for
13 decades now. I've been especially following Portland
14 since Kendra James. And I returned from ten years
15 overseas where I worked on police brutality in eastern
16 Europe. And when I came back I guess I was just
17 hyperaware, more aware than usual, and I started attending
18 as many public meetings as I could. I even went to the
19 police union meetings when they -- they were forced to
20 open them up, because We the People made them open them up
21 to the public.

22 THE COURT: If the proposed settlement agreement
23 is not a good idea, what should we do?

24 MS. ELINSKI: I say that as a no and then I'm
25 not sure -- I'm not sure exactly what the criteria are for

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1 accepting it at this point. That's where I'm still a
2 little bit vague.

3 THE COURT: Let me summarize it for you.
4 Basically, we have a complaint that was filed by the
5 Department of -- by the United States, acting through the
6 Department of Justice Civil Rights Division and the U.S.
7 Attorney's Office. The complaint alleges that there has
8 been a pattern and practice of unconstitutional and
9 otherwise unlawful provisions.

10 MS. ELINSKI: I've read the complaint.

11 THE COURT: And the proposed settlement
12 agreement tries to come up with a system to remedy those
13 problems for the future. My question, the question that's
14 legally before me, my legal jurisdiction, is to answer the
15 question of whether or not the settlement agreement is
16 fair, reasonable, and adequate to deal with those
17 problems.

18 If it is, the law tells me to approve it. If it
19 is not, the law tells me to disapprove it. That is the
20 criteria.

21 In addition, the parties have asked me to retain
22 jurisdiction to ensure that even if I do approve it, it's
23 actually enforced and complied with. And I'll tell you,
24 if I do approve the settlement agreement, either this
25 version or an amended agreement, I will take jurisdiction.

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1 I will continue jurisdiction, and I will ensure that its
2 terms are complied with.

3 But right now the question before us is whether
4 this settlement agreement is fair, reasonable, and
5 adequate to remedy the concerns identified in the
6 complaint.

7 And, by the way, I'm -- Elizabeth, that doesn't
8 count towards her time.

9 MS. ELINSKI: I appreciate it. I hope everyone
10 appreciates that.

11 That is succinct, and I understand the gentleman
12 earlier was saying that if you had to agree to it, then
13 you would need to appoint someone in charge of overseeing
14 this.

15 My question about this is why should we use more
16 resources when, really, the problem is part of the
17 culture, and there's so many issues going into originally
18 the investigation and the public testimony that was given.
19 The average person, the people I talked to -- I asked
20 neighbors and TriMet drivers what they would like me to
21 say today, and pretty much everyone agrees that the
22 Portland Police are beyond fixing at this point. It
23 is -- it is structural. It is -- they're out of control
24 is the quote I got many times, and I don't think this
25 would be an answer.

1 I know, because I hardly knew about the
2 hearings. It wasn't out in the public and easy to access.
3 I finally made it to the St. Johns Community Center to
4 tell one of my personal experiences and hear others, which
5 was shocking, and I'm still shocked when I'm here, again,
6 to hear other stories that continue on.

7 And then when the City was getting the response,
8 I was very disappointed. I don't feel they listened to
9 the public. When I asked if I could be involved in that
10 in any way, I was ignored; my emails, my questions. I
11 even offered to proofread, so --

12 My point is, is this is more of the same that I
13 observed over my 20-plus years living in Portland. And
14 with a new chief and a new mayor, it's still the same.
15 And one focus of the agreement is on the mentally ill,
16 where we're ignoring, to the detriment, really, of
17 including the -- the school-to-prison pipeline, the way
18 our children are treated, the way are women are treated.
19 There are so many women that are afraid to call the cops,
20 who may have been mistreated by the cops. I know of one
21 lady who got an apology from the mayor, but when she
22 brought her case to the court, the court where things were
23 supposed to finally come to a head, she was -- she did not
24 win. They found, you know, the police can treat you any
25 way they want.

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1 What we have here brought by the Justice
2 Department and agreed to by the City is a very extensive
3 proposed settlement agreement with lots of terms, lots of
4 proposed changes. It's 70-something pages. 77, something
5 or other, pages. 77 pages. With a vision of continued
6 Court oversight to enforce the settlement agreement. And
7 you correctly point out the need for community
8 involvement. You may or may not know they're creating
9 under the settlement agreement a Community Oversight
10 Advisory Board that will work with the compliance officer.

11 MS. ELINSKI: And each council person gets
12 to -- gets to appoint five of their own to serve on there.

13 THE COURT: That's correct.

14 MS. ELINSKI: With all due respect, I think the
15 money would be better spent in the school district.

16 THE COURT: Excuse me. If there's going to be
17 applause, please take it outside. If you want to applaud,
18 you're welcome to go outside, speak to the news media, or
19 carry a sign. But applause in this courtroom I find
20 distracting, because I need to hear what the speaker is
21 saying. If it happens again, I'm going to ask the person
22 to leave.

23 Sorry. Go ahead.

24 MS. ELINSKI: Thank you so much. I will
25 quickly --

1 I saw that the other day when I turned in my
2 testimony to you. Me, personally, I have a week to turn
3 in my tort claim. I'm amazed I made it here at all. I've
4 been -- the left side of my body has been paralyzed since
5 I was hurt six months ago, and the Independent Police
6 Review Board deleted my file. And I've been fighting it
7 every -- once a day. I spent every Wednesday for those
8 first five months trying to get through the system. So I
9 know how difficult it is for people that are willing and
10 have the time to read up on it. It's still incredibly
11 difficult.

12 This is not an answer to the overall issue. We
13 should -- we should say no now and, as a community, work
14 on the alternatives that we've presented over these years.

15 THE COURT: You raise very serious and important
16 points. I do believe that there are many people in the
17 Portland Police Bureau of good faith, good intention, and
18 who are very responsible. I think those that are not have
19 caused a lot of problems for the community.

20 Now, when you make the comment that you did
21 about the entire Portland Police Bureau, I don't think any
22 of us or at least not most of us want to live in a society
23 with absolutely no policing. But we want to live in a
24 society where the police follow the Constitution and the
25 laws and engage in good policy.

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1 THE COURT: Take your time. Take your time.

2 MS. ELINSKI: I'm mostly shocked by the
3 finance -- the resources that go into this, and our -- our
4 police force. They have an entire array of different
5 types of toys and vehicles and outfits, and I just see
6 them around my neighborhood causing -- wreaking havoc,
7 causing chaos, and I find it just -- just distasteful. I
8 find it a slap in the face that we are kept out of their
9 processes.

10 For example, the union meetings that I was
11 mentioning, I just -- I think that -- I think it's also
12 hard for whistleblowers within their ranks. As we heard,
13 there are those that stand up and I applaud them and I
14 actually have my whistleblower book on me today. But I
15 think that all around the -- the sense of immunity,
16 impunity that the police have is not going to be --

17 THE COURT: All right. One second. Excuse me
18 one second. Whoever applauded, please leave the courtroom
19 now. I've given enough warnings. That is not
20 appropriate. Who was it who applauded, please? I didn't
21 see you. That's not fair to the speaker.

22 MS. ELINSKI: I'm used to it. I'm a teacher.

23 THE COURT: No. But it's not fair.

24 U.S. MARSHAL: You applauded earlier.

25 THE COURT: I want to be able to concentrate on

1 the speaker. It's not just me. I want respect for the
2 speakers. If you don't know who applauded, then I'd ask
3 the Marshals Service just to sit in that area for a
4 moment, please, and we'll continue.

5 Don't you understand, people, you're being rude
6 and disrespectful to your fellow citizens who have come
7 here to give us their views. I have given you all the
8 opportunity to speak your views. I want to hear from the
9 person at the podium.

10 Ms. Elinski, I apologize for whoever made that
11 disturbance. You may continue.

12 MS. ELINSKI: Thank you very much for doing your
13 research and taking this time to have the most -- I'm
14 having a really hard time today.

15 THE COURT: If you prefer --

16 MS. ELINSKI: A through look into this that I've
17 seen, and I -- I think this is a turning point for us.

18 If we say -- if we can go back, start over at
19 this point, I think it will make a difference.

20 THE COURT: Yeah. You raised very important
21 points, and I thank you and appreciate your coming here.
22 We're all struggling trying to find the right solution and
23 I appreciate your comments and your being here. Thank
24 you, Ms. Elinski.

25 All right. I'd like to hear, please, from

1 Eric Terrell, followed by Alan Francis, Barry Joe Stull,
2 and Greg Benton.

3 Mr. Terrell. And I did receive your letter,
4 Mr. Terrell.

5 Is Mr. Terrell here?

6 Very good, sir.

7 MR. TERRELL: Good morning, Your Honor.

8 THE COURT: Good morning. And I did receive
9 your letter dated yesterday, February 18th.

10 MR. TERRELL: Yes. I'm Eric Terrell. Last name
11 spelled T-E-R-R-E-L-L.

12 Your Honor, I'd like to also echo some of the
13 comments that people have said. I thank you for this
14 fairness hearing today. I thank you for having all of the
15 stakeholders here, and I especially thank you for inviting
16 the community. And I applaud you.

17 THE COURT: Not literally, please.

18 MR. TERRELL: I'm Eric Terrell, but I'm here
19 today to speak about a matter of significant importance to
20 any appellant or officer who may choose to file an appeal
21 with the Independent Police Review Division.

22 In the DOJ settlement agreement, page 43, in the
23 section titled Investigation Time Frame, one sentence in
24 paragraph 121 reads, quote: Appeals to CRC shall be
25 resolved in 21 days, unquote.

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1 While I believe it's certainly worthwhile to
2 stipulate that all administrative investigations of
3 officer misconduct should be completed within 180 days, I
4 do not believe that the time frame for CRC appeals should
5 be limited to 21 days, nor do I believe that the CRC
6 appeal time frame should be a part of the overall
7 administrative investigation's 180-day time frame.

8 I will not go into detail about why I believe
9 the 21-day period to be inadequate. The CRC's letter
10 addressed to you, Judge Simon, does an admirable job in
11 making the case.

12 Instead, I will spend my time saying why my
13 perspective on the 21-day issue may be unique.
14 Essentially, I have experienced the time demands on the
15 appeals process from both sides of the CRC hearing room.

16 As a former sitting member of the Citizen Review
17 Committee, then later as CRC's first serving appeal
18 process advisor, my thinking about this important topic,
19 the 21-day appeal process limit, is based on my
20 considerable experience in assisting appellants in
21 navigating the workings of the CRC appeal process.

22 My CRC experience is in three related areas.
23 First, in 2001, 2002 I served as a citizen volunteer on
24 the first IPR Citizen Review Committee. Newly formed
25 under the leadership of Mayor Vera Katz. Early on, it

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1 became very clear that investigating the different cases,
2 including holding appeal hearings in a thorough,
3 impartial, and independent manner required considerable
4 time and effort by all members of the committee, much more
5 time than most of us had anticipated.

6 However, everyone agreed. So be it, if that's
7 what required of CRC to do a quality job and meet the
8 expectations of the City, as well as the community at
9 large.

10 Second, having completed my term of service on
11 the CRC, I suggested to my former colleagues that CRC
12 needed someone other than a CRC member to assist an
13 appellant or officer in understanding all elements of the
14 CRC appeal process, as well as in supporting the
15 individual in working through the process.

16 All agreed such support would be helpful, so I
17 volunteered to draft the protocol language for the
18 position. The outcome of the effort was the creation of
19 the CRC appeal process advisor. Commonly known as the
20 APA. Both CRC and IPR endorsed the APA position. And,
21 later, it was approved by the City Council.

22 Since then, assistance of an APA is routinely
23 offered to all appellants and officers at the beginning of
24 an appeal process.

25 Third, not long after the APA position was

1 established, a CRC appeal hearing was about to be
2 scheduled, and the appellant requested the assistance of
3 an APA. I was asked to serve as the first APA. I agreed
4 and have continued to serve in that role over the past
5 eight years or so.

6 As a citizen volunteer, I have been associated
7 with CRC appeal hearings for well over ten years. And in
8 my opinion it is not realistic to expect an appeal hearing
9 process to be completed within 21 days.

10 Such an arbitrary, ill-considered 21-day time
11 limit does a great disservice to the appeal process, as
12 well as to all parties involved.

13 Furthermore, it undermines the very purpose of
14 the Citizen Review Committee to ensure that all reviews of
15 appeals be independent, thorough, and impartial. And in
16 my experience, this is what appellants most want as they
17 begin the appeals process. They seemed less concerned
18 about the time required to complete the process. It
19 stands to reason having adequate time to do the job is
20 essential to the success of the appeal process.

21 In preparation for this fairness hearing today,
22 I carefully studied the letter addressed to you, Judge
23 Simon, by the Citizen Review Committee. It articulates
24 extremely well why the 21-day time limit is impractical
25 and why it should be removed from the overall 180-day

1 administrative investigation's time frame.

2 I agree with CRC entirely on this matter. I've
3 lived in Portland for about 14 years, and my very first
4 visit to this federal courthouse was about two weeks ago.
5 After moving through the screening area and entering the
6 atrium, I was struck by the powerful inscription on the
7 atrium wall, which reads, quote: The first duty of
8 society is justice, unquote.

9 Because it is one of our most fundamental
10 truths, I especially like seeing it so prominently
11 displayed at the entrance of this building.

12 I believe today's fairness hearing exemplifies
13 our society's and our city's aspiration to this first
14 duty. Justice.

15 Removing the 21-day limit for CRC appeals is
16 needed to assure our citizens, including our police
17 officers, a meaningful opportunity for true justice.

18 Thank you, Your Honor, for providing me time to
19 offer my testimony today.

20 THE COURT: Thank you very much, Mr. Terrell,
21 for those thoughtful comments. I appreciate them.

22 Alan Francis, please. Followed by Barry Joe
23 Stull and Greg Benton.

24 Good morning.

25 MR. FRANCIS: Good morning. Thanks for having

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1 me back this morning. I'm Alan Francis, F-R-A-N-C-I-S.
2 I'm a little bit nervous today, so I'll try to be very
3 brief and matter of fact.

4 The reason I'm here today is because I would
5 like to give an opinion from the perspective of someone
6 that has a mental illness, from the perspective of someone
7 who has been symptomatic and has had to be taken to the
8 hospital several times.

9 I've had experiences here in Portland. I've had
10 experiences in other cities. I don't think it's relevant
11 to identify other cities. I think it's most definitely
12 relevant to identify Portland.

13 Basically, what I would like to begin with is I
14 do not think that what I read in the settlement agreement
15 is sufficient. It's a good step. I commend everybody for
16 taking that step, but I didn't see any real solutions in
17 there. Yes. Portland Police, you know, probably needs to
18 train themselves. But that alone doesn't seem to be the
19 answer to me. If something is broken -- I mean, if
20 I -- if I get in trouble and a judge tells me that I need
21 to make these corrections, you know, the judge is going to
22 tell me I need to go to therapy or I need to go to rehab
23 or something. The judge isn't going to tell me, Alan, you
24 need to go fix yourself. End of story. They're going to
25 give me the solution to fix myself. And I don't see that

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1 in the agreement.

2 I see in the agreement: Portland Police, you
3 need to go fix yourself.

4 And I don't see that as a viable solution.
5 There needs to be more oversights.

6 The other solution I see is I think there needs
7 to be more community policing. I go to DBSA, Depression
8 and Bipolar Support groups, once a week. Very -- make
9 good friends there. Lots of support. I have been going
10 there for four years, and I have not seen anybody from the
11 mental health team, anybody from Portland Police come in,
12 sit in a meeting, talk to us, and try to understand us.
13 That's what is going on. We're very -- we're very much
14 misunderstood.

15 Yes, I suppose, we could make the effort, you
16 know, and call out and say, "Hey, would you like to come
17 to a meeting?" But we're dealing with stuff. You know,
18 why should we have to make that -- you know, that call?

19 Briefly I'll just say a couple of
20 descriptions -- or a couple of examples of what has
21 happened. I was up in -- I won't identify the city. I
22 had had a breakdown in a city much appropriate to Pioneer
23 Square, and the police department there had handled it
24 very well. They had set me down, you know, on a building;
25 luckily there was a street pastor there who was able to

1 talk to me. I was calmed down. I wasn't roughed up. I
2 was calmed down. There were no weapons. No Tasers. You
3 know, the ambulance was called. I was taken to the
4 hospital. I was given treatment right away. That was
5 handled very well.

6 Another -- another situation was I had become
7 suicidal up in another city, and the -- the police
8 department had come to investigate a criminal matter, and
9 I was suicidal, and I had actually pulled a knife, and I
10 feel that -- I can't speculate. No one can speculate.
11 But I guess I will speculate. I feel like if that had
12 happened down in Portland, here in Portland, I would not
13 be speaking here today.

14 I mean, that city could have done a better job,
15 too, they took me to jail instead of the hospital.
16 Obviously, I pulled a knife, wanting to, you know, be shot
17 by the police. I needed to be in the hospital. I didn't
18 need to be in jail that night.

19 Here, in Portland, I had -- I had had obviously
20 been going through mental health challenges. I was not
21 taken to the hospital. I was taken to the Justice Center.
22 I was stripped naked, put on the fourth floor. You know,
23 put in -- locked in a cold cell. I felt like it was
24 very -- I felt like having a mental illness, they were
25 punishing me, because the other cells were warm. Those

1 other people had clothes. I'm not. I'm in a cold cell.
2 I'm cold. You know, I'm fed, you know, less sufficient
3 food than everybody else. You know, three meals a day.
4 You know, food is not great, but I'm getting lesser food
5 three meals a day.

6 I just feel like there -- that there could be a
7 lot of improvements made. And I'll just end by saying
8 again, I think the answer is community -- you know,
9 community policing. Please come out. Please make an
10 effort to understand us. I live on Morrison and Grand. A
11 lot of that building is used as transitional housing for
12 probation and parole. So, yes, there are a lot of
13 probation and parole officers in there.

14 I have once to see a police officer or mental
15 health team to come in and do a -- community policing and
16 get to know us. I would love to have someone get to know
17 me. If I ever had another crisis, I would love -- I would
18 so appreciate for one officer to be like, "Alan, is it
19 time to go to the hospital?" Not five, six officers
20 outside my door with guns drawn, saying, "Get out here
21 right now. Hands up." That's a little -- that's a little
22 intimidating.

23 So, please, community -- community policing.
24 More community oversight. Please don't just leave it at
25 Portland Police, you know, you're a broken system. You

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1 need to -- you know, fix yourselves. There's no fixing
2 yourself. They need answers to fix themselves.

3 Thank you for hearing me.

4 THE COURT: Thank you very much, Mr. Francis. I
5 appreciate it.

6 Mr. Stull, welcome back.

7 MR. STULL: Thank you, Your Honor. Yesterday I
8 had an appointment with Commissioner Amanda Fritz, and
9 that was scheduled before this.

10 THE COURT: And Stull is spelled S-T-U-L-L?

11 MR. STULL: It's S-T-U-L-L.

12 THE COURT: Thank you.

13 MR. STULL: Your Honor, I'm a cannabis activist.
14 I've been working on marijuana legalization now for, oh,
15 30 years. I've got a philosophy of nonviolence. One of
16 the things it informs is conversation with a super
17 tentative Oregon State Police and my friend Tom Alexander,
18 we used to go to the Governor's commission on -- against
19 violent crime, and he said, you know, during the war
20 people would have ambassadors and they would try to
21 negotiate and the comeback was, yes, but we still end our
22 wars by dropping atom bombs.

23 So I realized a long time ago that there's no
24 way I can out-violence this system, so what I'm about to
25 say is -- needs to be taken in that light.

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1 My friend, Lindsay Bradshaw (phonetic) was one
2 of those folks who died from Vietnam decades later, but he
3 told me the first rule of hand grenades is don't bunch up.
4 And one of the obvious things is your whole squad can be
5 hit with a whole hand grenade. Less obvious is if
6 somebody's in the bushes and they only have one hand
7 grenade, that's when they use it, and probably even less
8 obvious than that is when people are spread out and they
9 see that hand grenade flying through the air, they can
10 turn around and directionally point where that's at.

11 I made a mistake. I violated the first rule of
12 hand grenades. I bunched up. I pointed out that the
13 Portland Police in 1989 gave my ex-girlfriend Elizabeth
14 Susan Johnson drugs and money to inform on me. The
15 officer who prosecuted that case, Officer Cheryl Arnold,
16 ended up having \$75,000 settlement the City of Portland
17 paid to her for her co-officers abusing her. Sexual abuse
18 on her by the other drugs and vice officers.

19 I went to prison. I started my college career
20 in the penitentiary. My departing shot from out here by
21 the airport, as I was leaving prison I filed *Stull v.*
22 *Hoke*. It was a prisoner's rights case. I went to
23 Portland Community College. I got an award from Governor
24 Kitzhaber. I transferred to Lewis & Clark College. My
25 first semester there *Stull v. Hoke* hit the Oregon Supreme

1 Court, reversing a former Republican attorney general.
2 You might assume I'm not a Republican or an attorney.

3 The problems in my life really came to the fore
4 with the passage of the marijuana -- medical marijuana in
5 1998. Before I graduated, my partner and I did classes at
6 Portland Community College, and the -- some people didn't
7 like that.

8 And, anyhow, I ended up having a knock on my
9 door September 1st, 2003, and two things happened:
10 Officer Jason Sery put in his police report that the issue
11 of Steven Dons came up. Sounded like I had inside
12 information. Steven Dons died in custody across the
13 street over here after a shootout with the Portland
14 police.

15 There was no autopsy on Officer
16 Cheryl -- Officer Waibel -- Colleen Waibel. We don't know
17 if that was friendly fire or not. But I do know that that
18 marked me. And what really sealed my fate was in March of
19 2004 when Jason Sery, who put that in his police report,
20 fatally shot and killed James Jahar Perez, who we heard
21 yesterday was fatally shot and killed 24 seconds after he
22 was pulled over by the Portland Police.

23 I was protected under the Medical Marijuana Act
24 by my neurologist, Robert Grimm. He had a Supreme Court
25 case himself. It was *Jennings v. Baxter Healthcare*, where

1 he was an expert witness qualified by the Oregon Supreme
2 Court. After he was qualified by the Oregon Court of
3 Appeals, with the advanced degrees in neurology and
4 neurophysiology. He came in. My defenses under the
5 Medical Marijuana Act were denied using a case called
6 *State v. Owenby*.

7 As my appeal was going up through the system,
8 the Court of Appeals ruled that *Owenby* rationale had been
9 superseded by the passage of the medical marijuana law.
10 Not for me.

11 As I was appealing, my nonprofit affordable
12 housing landlord at that point filed a 30-day no-cause
13 eviction. I appealed that. It was against the law for
14 that case to even be filed. And my Supreme Court case,
15 *Stull v. Hoke*, defines the act of filing a case.

16 I come home from work. I had a job at the time.
17 I came home from the dentist appointment actually that
18 day. I couldn't get in my apartment. I was locked out in
19 violation of a state-pending appeal. I proved that. The
20 day of the Court of Appeals order came out, the landlord
21 and sheriff went in and just -- the landlord took a week
22 to destroy everything in my -- in my apartment.

23 I proved that they did it again. Okay. I'm
24 still working against the City of Portland. The problem
25 is we have a sidewalk obstruction ordinance, a sidewalk

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1 management ordinance that was filed against the City
2 charter. Mr. Woboril, over here, knows it was passed
3 illegally. And the policy of the City Attorney and the
4 City of Portland is they're not going to do anything until
5 an attorney takes that case to court.

6 I took that case to court. I was arrested
7 August 2011, October 2011, November 2011, December 2011,
8 February 2012, July 14th, 17th, 17th, 19th, 19th. I broke
9 the police car. I was arrested the last time. I was on
10 the agenda at the City Hall. I was on the agenda under
11 the topic, "A Moral Profile of a Leader." I got arrested
12 on my way in. I broke the police car. They stopped
13 arresting me.

14 If that's how cowardice they are, that they have
15 to target me for just simply being right, I don't think
16 this settlement is going to really work, because they
17 can't be trusted. The City of Portland is as corrupt as
18 the day is long, and I'm living proof of that.

19 Thank you for your time, Your Honor.

20 THE COURT: Thank you, Mr. Stull. I appreciate
21 your being here.

22 Gregory Benton, are you here, sir?

23 MR. BENTON: I am.

24 THE COURT: Welcome. Mr. Benton, I will let you
25 know I did see your videotaped testimony that was provided

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1 to me by Consult Hardesty. You're welcome here today.

2 MR. BENTON: All right.

3 THE COURT: Spell your last name.

4 MR. BENTON: B-E-N-T-O-N. I'm speaking on
5 behalf of people with perceived mental illness. I have
6 epilepsy, Your Honor. On multiple occasions I've been
7 taken into the hospital with a need by the police
8 officers, rather than by the hospital staff. The police
9 found themselves in a situation where they were stopping
10 me. I even had a caretaker at Providence, having suffered
11 from acute diverticulitis, as well as seizures. We had to
12 fight to get me into the hospital. The police were there
13 blocking me.

14 What I would have to say is that my disagreement
15 with them is with their violence goes back to 2003 when I
16 was riding my bicycle to work at Tovan School (phonetic),
17 where I was in computer infrastructure and teaching
18 computer technology.

19 A gentleman was standing back at the stoplight.
20 I looked him dead in the eyes, 20 feet from me, he rammed
21 directly into me. He pushed me sideways and another car
22 almost ran over me. Immediately I was vamped upon by a
23 group of people. They didn't care about me. They wanted
24 to look at my backpack. They took my backpack. I went to
25 the hospital. No particular issues. I filed a civil

litigation and for some bull reason the attorney dropped the case. No settlement. Nothing was done.

2005 I was driving my car down by Laurelhurst Park. I was rear-ended. I was -- excuse me. Let me back up. Police sirens all over. The traffic was stopped. I pulled to the inside lane and was waiting. An SUV barrels down behind me, squarely changes lanes, rear-ends me. If I didn't have my foot on the brake, I would have ran into the truck in front of me that had the drop gate down. We exchanged information.

We continued a month later. I was shot in the head. I was confronted by some youth that I had seen standing by my apartment building on 17th and Killingsworth; the same youth who had been selling dope on the corner for five years a half a mile from the police station.

Now, you know if you're selling dope a half a mile away from the police station and the police drive by you every day, you must be working for the police. They didn't live in the neighborhood. They lived out in Rockwood.

The police officers -- or a plainclothes female police officer was on the scene as I was being confronted by one gentleman in the front. And I knew everybody standing there except for the guy who was talking to me.

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Moving up to 2009, sitting out -- same thing, sitting out in the intersection and somebody else's car would get rear-ended. That's when I had Dr. Grimm, who we spoke to as a neurologist, and he probably diagnosed me with epilepsy, traumatic epilepsy, bleeding in the brain.

I think what you are getting is the gist of -- oh, I forgot one other incident.

I did file a civil litigation in federal court. In this civil litigation the police came in and it -- it was a four, five. Police came into my building based on an anonymous non-documented phone call to search for a person who had been shot outside and dragged in the building. No evidence. No gunshot. None of that stuff. They kicked in every door that didn't answer and put a gun in everybody's face who did and asked them to search the building without a warrant.

I -- I was suffering from this traumatic brain injury. Luckily, I woke up. Same police officer who murdered Aaron Campbell on the scene. Only by the grace of God they didn't kill me. As I opened my deadbolt lock, they told me to close the door.

When I finally was taken out -- their testimony was they heard a shotgun being ratcheted. One said it was a bullet action lock; the other said it was a heavy-caliber gun. I had nothing. I just had a deadbolt

Boom. The light came -- I got -- I saw the tunnel.

That's what people say when they die.

I went to the hospital. The police were there. Actually, they were taking pictures and laughing about it. They thought it was funny. Well, not really.

So I'm -- I digress. I'll move a little on. 2007 comes along. I'm driving my car. I get T-boned by a car. As I crossed the intersection at 17th and Alberta, a car maybe a quarter of the block up -- it's a downhill slope, so I'm going east to west, they're going north to south in the downhill and speeding. I see him and I try to avoid him. He aims his car at me. Hits me. Spins me around 360 degrees. Thank God I was driving a Volvo. Backs up, hits me again, driving through the intersection, through a tree, and into another car. Two minutes later the police officer shows up and he threatened to give me a ticket.

Even when I filed the civil litigation in court, my attorneys basically said -- we had a litigation and I'm having -- suffering from all the injuries I have, which is traumatic brain injury, fractured skull, torn meniscus, ripped rotator cuff. They said, well, you know, there was no ticket issued, because I -- no investigation because I went to the hospital in a private car rather than the police car -- I mean the ambulance.

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lock. I was almost dead, as well.

When you have these type of incidents and the police are constantly covering it up, it shows a root of corruption. If you ask people what to do about it, the federal court should seize the Portland Police. They are a military organization. They do what they're told. If the City is not able to discipline them and control them, the federal court should come in and make rules that allow them to be accountable for their actions.

I am not hating on the police. I have relatives that were in the police department. I served as an officer of the court myself. If you see my resumé, you see all my personal information. If I can be of any assistance, I will.

Oh, yes, I do have a 1983 filed on the City and Emanuel Hospital, are willing to -- they want to mediate it and settle it rather than go to court. I kind of put them in a headlock. I wish you would do the same. Thank you.

THE COURT: Thank you. I appreciate you being here, Mr. Benton.

Laurie Benoit here?

After Ms. Benoit, I'd like to hear from Katie Braun, Kristen Chambers, Teresa Roberts, Kelly Caldwell.

Is Nancy Newell here? Nancy Newell?

Okay. We'll go through Kelly Caldwell.

And, Ms. Benoit, if you could spell your last name, please?

MS. BENOIT: B-E-N-O-I-T.

THE COURT: Welcome.

MS. BENOIT: Thank you, Judge. Thank you, D-O -- Department of Justice. I am a longtime resident. I went to grade school, high school, and graduated from Oregon State, have lived in the Portland area most of my life. I'm very familiar with the Portland Police. As far as I've seen, they've always been terrible, for the most part. I have family members, also, who are in different police departments in the state. None of them act the way Portland Police act, by and large. There are a few in the Portland Police Bureau that are -- that are good police, but, by and large, not good for the most part.

I've been to many protests throughout my life. They've always been very difficult to try and just talk with and, you know, on a human one-to-one -- they've pepper-sprayed and beaten. I was at Jamison Square. Alicia talked a little bit about it.

When -- when I was at that particular one, I had two teenagers. One was a 16-year-old on the left side. We had a lady -- people in our group who couldn't walk. There was one lady who was beside me who didn't walk well

and was disabled. They surrounded us. They came into that park. We were protesting. And what they did was unheard of.

This young 16-year-old was telling them that he was a young guy, that he was a minor, as was his sister and other people in the group. We relayed to them no. We were trapped there. It's been more than 27 months that we've been fighting this with them. They were throwing people in. They hurt me. I was hurt for more than a year, my back and my arm. The police were called on them and -- on the police. We called 9-1-1 on the police because of the way the Portland Police were treating us. They held us captive in a paddy wagon for hours. And even after the ambulance was called, they still wouldn't let us go and, you know, get the medical help after this 16-year-old had been thrown in the paddy wagon, the other people, myself included, had been injured.

And so they -- I'm crying, and they have the handcuffs way too tight. I had those scars for -- for more than a year, as well, as well as my back problem.

And so what happened? Finally, you know, we get into there. I see this young guy again. And so, you know, he is -- one of the officers is telling me, "Oh, you're acting like my two-year-old," and he tells this guy who keeps telling him, "I'm only 16 years old" -- you

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know, they held him for hours, all of us, for hours, inside -- you know, oh, that -- the Justice Center. Justice -- right -- Center.

And so basically what happened -- so they finally -- before they let him go, they looked at him and said, well, your mother must have had you when you were, like, two years old, and then making derogatory comments about living on the street. How, oh, it must be really rough. This is the Portland Police that are doing that. Oh, it must be really rough living on the streets. You look like you're a lot older than 16. Finally, they let him go.

So this is a kid who was in our group, trying to protest.

I have a son last year that -- a teenager. He was hopeful, you know, that maybe the system would change, because we do have family members who have been in different bureaus -- the Beaverton one and Woodburn one and Salem -- and we've seen, you know, how these bureaus work, and they protect us, and they protect, you know, themselves, and it's -- we're working together. We're not, you know, trying to be on opposite sides. We're trying to be on the same side. But all they do here is they pepper-spray us. I was pepper-sprayed several times.

Again, there was a whole bunch of us and a

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teenager -- a different protest from the first one, where we were just sitting in the park, where we're -- you know, we're all there and all these teenagers, and they're pepper-spraying, you know, directly, like two or three, right at me, as well as all these other teenagers. And then another one -- we're trying to help this family stay in their home. Pepper-sprayed there. Over the years this is what I've seen. This is the kind of treatment that we get in this town time and time and time again.

Well, you know what? It needs to stop. And I say go to trial. This is not good enough; not even the beginning of what needs to happen. There needs to be a shakedown in this Portland Police Bureau, and it needs to start from the top on down -- and then work its way down.

There are some good police officers in Portland, but, by and large, no, there aren't.

THE COURT: Thank you very much, Ms. Benoit. I appreciate you being here.

Katie Braun? Followed by Kristen Chambers.

Welcome. Ms. Braun, spell your last name, please.

MS. BRAUN: B, as in baby, R-A-U-N. I appreciate and express gratitude for letting this hearing happen. I'll give you my report written after I speak. It's really difficult for me.

THE COURT: Okay.

MS. BRAUN: I'm from Dallas, Texas. I moved here over a decade ago to become a commercial airline pilot for IP Airlines (phonetic). I'm a flight instructor. I have many, many military friends. I'm a Portland realtor. And I'm a block watch captain for the Portland Police Department to prevent crime.

On December 9th, 2011, I called 9-1-1 after my military American Airlines boyfriend broke in my house through the dog door. Filed a police report that Sunday. The next Monday I went to get a restraining order against him. I never really experienced domestic violence, and my only experience with police was through the crime prevention, with Portland Police Department in my house, as a community citizen, and as a realtor.

My next year, 2012 to 2013, was the worst year of my life because of the Independent Police Review, the Portland Police. It was more violent and worse than the experience of my 15-year old -- ex-boyfriend breaking into my house and beating me Portland needs accountability. They need an Independent Police Review. I knew nothing about the Portland Police, really, other than the community block watch until my experience, and I'm here to testify about that experience --

THE COURT: Would you like a cup of water?

MS. BRAUN: -- and what could be done.

THE COURT: Mary, would you assist, please.

MS. BRAUN: When I called 9-1-1, Sergeant Dave Galladay showed up at my house. I live three blocks from the East Precinct. He's a sergeant in that East Precinct. I bought my house near the police department to be safe as a realtor and a community citizen against people I didn't even know. When my loved one broke in and Sergeant Dave Galladay showed up on a Sunday, he treated me horribly because I was, quote, hysterical.

I later looked up "hysterical," which was in my police report. Which is translated from Greek as "womb." Women in domestic violence, it turns out, is characterized as out of control and hysterical unfairly.

When that police report did not go as I expected, I made a secondary police report at the women's domestic shelter at Gateway. That's also about three blocks the other direction from my house in East Precinct.

Sergeant Dave Galladay never told me about that domestic violence center. He never told me how to file a restraining order the next day, but I did. And all he did, really, was insult me and not arrest my ex-boyfriend after the ex-boyfriend admitted in the police report that he broke in via my dog door.

I didn't know, once again, much about Sergeant

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Dave Galladay, but I'm attaching the Willamette Weekly article about him. He is a retired -- refired -- a fired policeman from Pontiac, Illinois. His police chief, Don Schlosser, said in *Willamette Weekly*, and I'm quoting, quote, "His methods were not something we wanted to perpetuate in our community," end quote.

For the next year I filed a complaint in the Independent Police Review. Sergeant Galladay had been demoted already in Portland. I found out from this *Willamette Weekly*. He has had other incidents. I'm asking Your Honor to track these and make these public, because I should not have to fear my police officers that come to my house. I should not have to Google the police officer and find out why I'm treated with so much injustice. I should not have to experience my own injustice of the Independent Police Review that is not independent.

Here is my experience, and there will be another lady testifying last about this experience, too.

I appealed the Independent Police Review that absolutely went nowhere, and I'm asking that that process be extended, because it cannot be done in the short time frame that -- in my case it took over a year.

There was a retired sergeant, Steve Morrow, on the Independent Police Review. That retired Portland

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police sergeant, Steve Morrow, has now retired from the Independent Police Review. Also, the director in this year has retired. Partly because I want to say I've talked to the City Council twice publicly about my incident. And about this time last year I was also in your courtroom talking about my 9-1-1.

After my 9-1-1 call it got worse, because the Independent Police Review accused me of impersonating Kelly Caldwell, who will speak, because we looked the same.

Specifically, Steve Morrow, with the Independent Police Review, he told me on the phone, "I am looking at your picture. Do you not have curly blond hair, blue eyes, and a big bright smile?"

I said, "I'm surprised you're looking at my driver's license picture online; but, yes, that does characterize me. You should look at Kelly Caldwell's pictures, also, because you have her written report, her name, her signature, her phone number, her email, her address, in addition to a separate Independent Police Review report from me."

Anyway, long story short, I found so much corruption in the Independent Police Review that I went to apply at City Hall for the Independent Police Review Citizen's Board. The day I got there they were deciding

1 at the last minute not to take any interviews or
2 applications that day.

3 So the more I tried to help the process at the
4 Independent Police Review and applied to be on the board
5 committee for citizens, I found, once again, another
6 problem in just the application process for the public.

7 THE COURT: All right. Thank you, Ms. Braun. I
8 think I saw the time has expired. Do you want to just
9 sort of wrap up?

10 MS. BRAUN: Yeah, I'm going to give you
11 my "ask," and I appreciate, once again, the opportunity to
12 speak.

13 I ask Your Honor to mandate specific tracking of
14 independent individual police violence publicly. Once
15 again, track individual police men and women. I ask for
16 adequate policy and training on police violence and
17 retraining specifically on domestic violence. I ask to
18 extend the IPR time frame to review the cases. And,
19 finally, I ask for mandatory drug testing after deadly
20 force or hospitalization incidences the Portland police
21 review.

22 And I'll hand you the articles I referred to and
23 my handwritten testimony, and, once again, I appreciate
24 your time.

25 THE COURT: Thank you, Ms. Braun. Would you

1 retrieve the water on the podium, please?

2 Thank you. You can take the water if you want.

3 May I please hear from, I believe, Kristen
4 Chambers, followed by Teresa Roberts.

5 Spell your last name.

6 MS. CHAMBERS: Kristen Chambers,
7 C-H-A-M-B-E-R-S.

8 THE COURT: Good morning.

9 MS. CHAMBERS: I had no plans to testify today,
10 and I thank you for allowing me to at the very last
11 minute. I was so inspired by all the other testimony that
12 I heard today and yesterday that I felt compelled to get
13 up here and share my story.

14 Last fall I was leaving my office building, and
15 I walked around the corner to see a very slight, petite
16 man of color, young, running, very rapidly, away from a
17 plainclothes person. And immediately after that, in a
18 matter of seconds, I saw two very large officers, Portland
19 police officers, tackle this man to the ground, face
20 first.

21 One officer got up behind him and put his knee
22 up on the top of his back and what looked like the
23 majority of his weight. The other officer came around the
24 front and started punching him in the head.

25 UNIDENTIFIED SPEAKER: Oh, my gosh.

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1 MS. CHAMBERS: A third officer came up and tased
2 the man, at which point he made a loud yelling sound and
3 went completely limp. They were -- handcuffed him and put
4 him in a car.

5 Now, I was in complete shock. I have never
6 witnessed anything so violent in my life. It was a mere
7 couple of feet away from me. I did not know what to do.
8 I was racking my brain what to do in a circumstance like
9 this and the first thing I could think of is find out who
10 was involved and find out who participated in this,
11 because it seemed horribly wrong to me.

12 And so I approached the officers who were
13 involved, who very quickly seemed to turn away so that I
14 couldn't see what their names were, and told me that no
15 one was going to talk to me except the supervising
16 officer, and I had to wait for him to get there.

17 So I waited, and about four or five other police
18 cars showed up, a bunch of officers, and the supervising
19 officer came up to me, and he took my statement, and he
20 informed me that the suspect had recently robbed a Safeway
21 and, as he was running away, had used some scissors to try
22 to keep the security guard from coming after him.

23 And so I gave him my statement. I decided to
24 stay. I wanted to make sure that this young man got some
25 medical attention. He was bleeding from his mouth. He

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1 was moaning, and when he -- he was moved at all, he was
2 screaming. And so I stayed for a very long time.
3 Probably 30 or 40 minutes. And I was pleased to see that
4 some medics arrived and were taking his vital signs and
5 whatnot.

6 While I was watching that, another bystander
7 yelled out to the officers and said, "Hey, you're hurting
8 him. You're hurting him," and, you know, "You need to
9 stop. I don't think he's in his right mind," saying
10 things like that.

11 The officer who was mainly in charge of
12 supervising the suspect at that time turned around and
13 said, "Do you even know what this guy did? Do you know
14 that he just robbed a Safeway and he tried to slash a
15 security guard with some scissors, and all he got was a
16 bloody lip?" His exact words were, "I think that's fair
17 in the system."

18 And I remember that, because at that point I had
19 actually gotten my camera, my phone out, and I had taken a
20 video of it. And I just reviewed it before I came up here
21 to talk.

22 And so I was deeply traumatized by this
23 experience. I didn't know what to do. I filed a
24 complaint with IPR. I received a letter saying that
25 the -- I would be referred to the Internal Affairs

Department for investigation, and then I received a letter from Internal Affairs saying that the allegation would be dismissed because, although my story was in line with all the other witnesses', there were some things that I just didn't see. And one of the things I didn't see was that apparently the suspect had punched an officer in the face and had given him a bruise.

Now, I don't know whether that's true or not. Is it possible that that could have happened? Yes, that's possible. But I was there for the whole time. I watched the whole thing. I didn't see anybody getting punched in the face.

The two officers that recalled to me the events of what happened and the basis for what they thought was reasonable to use force in that circumstance didn't mention anything about punching anybody and -- or about anybody get any bruises.

And so, you know, when I filed that IPR complaint, I really didn't believe that anything was going to come of it. I pretty much knew that it was going to get dismissed. I knew that the guy had a pair of scissors and I knew that even though he had two guys on his back and there was no way he could have gotten his arms around to do any kind of damage, I just knew that that wasn't going to go anywhere.

And so the reason why I filed the complaint was I felt like it was important to just have a statistic, which I think is kind of sad, but I felt that that was important enough.

And what I ended up feeling, though, when the case was actually dismissed, was I felt just a really strong sense of hopelessness and just wondering, you know, if this is it, if this is all that can be done and this is allowed to continue on, something really serious needs to change in terms of who is reviewing these types of incidents and what kind of credibility goes into creating the systems that are set up to do that, and I don't think that even with the reforms that are offered through the settlement agreement that I think are a step in the right direction, I don't think they go far enough.

THE COURT: Thank you very much, Ms. Chambers. I appreciate you coming here.

Teresa Roberts, are you here? Welcome. Followed by Kelly Caldwell.

MS. ROBERTS: Thank you, Judge Simon and stakeholders and everyone who has come multiple times to this hearing and are not being paid today.

THE COURT: And, Ms. Roberts, it's R-O-B-E-R-T-S?

MS. ROBERTS: It is.

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And I did submit written testimony regarding what it's like to be a grandmother in a town where one lives in fear of being mistaken for being homeless and therefore harassed.

If I'm rocking a "I've given up" looking day at age 60 or if I'm coming back from camping with my kids and I said, "Oh, don't drive all the way across Portland. I'll take my tent and sleeping bag on the bus across town," I'm afraid to take my tent and sleeping bag on my bus across town. I'm afraid that my kids are dressing hip, which is always a style that comes from the fringe and could be mistaken for homeless kids. I, like probably many informed grandmothers in this town, live in fear.

I brought -- but it's that -- that's rather selfish testimony. But it is the testimony of the middle class. I always -- when I'm in downtown Portland, where the police are more violent, in my perception, carry a Starbucks cup, even though I do not drink coffee, and I carry an iPhone which I bought partly so I could find my way around Portland and use the transit system, but largely because it says I have enough money that you should not harass me. My Starbucks cup sends that signal, too. It compensates for the days that I'm dressed in clothes when I'm teaching an art class or I'm on my way back from something, helping someone.

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I live in fear in this town. I live in fear in this town. I'm afraid to go to the protests. I'm coerced. Even though I see so much corruption in this town, I'm afraid, standing here today -- I've been afraid of the times I've testified before City Council.

But I would like to testify on behalf of Consult Hardesty and Albina Ministerial, whose testimony I was here in the overflow room to see yesterday and also in support of a gentleman I believe who has already left, Mr. Barry Stull, who testified earlier today that he was arrested, conveniently arrested, on his way into testifying to City Council on the topic of leadership. I didn't exactly -- I'm -- I'm sure you've transcribed exactly the topic. It was clear that -- I, myself, was scheduled to testify to City Council that morning, so I happened to be walking up as Mr. Stull attempted to enter the building, was denied entrance, and arrested.

I took out -- I didn't know what to do. I was across the street. I shouted, "What's happening? What's happening?" I took out my cell phone and started taking pictures.

As he -- he was protesting that he was being arrested because he was on his way in to testify, and certainly that appeared to be the case. I went on in, because I was scheduled to testify, and testified. I

serendipitously -- I never knew who Mr. Stull was until today. I serendipitously brought my testimony notes from that day at Council with the date. I was testifying before Council on the Oregon corruption risk score card. I, too, was testifying about corruption, which was clearly what Mr. Stull was on his way in to testify about.

I called -- I went to the clerk and I asked for a copy of -- to figure out who he was. I said this gentleman was arrested. I posted his -- his picture on Facebook. I found out his name. I asked to see a copy of what he was supposed to testify about and was sent a copy of it.

So that's how I knew -- that's the little bit of information I had. I didn't pursue it. I -- I'm going on too long, so I'm going to give that to you.

Also, I have some time code notes on -- so this -- this verifies that gentleman's testimony -- time code and notes on the JTTF report hearing that when Mike Reese submitted his second empty report, which the City Attorney backed him up on against the express disapproval of the entire Council and every single citizen group from the League of Women Voters, the Japanese American Citizens League, the ACLU, Consult Hardesty, the Center for Intercultural Organizing, Copwatch, the Kafourys, everyone who got up, got up and testified that they opposed City

Council accepting this flawed report, which the City Attorney supported Mike Reese's legality, because they hadn't expressly the last time he turned in an order -- an empty report, they instructed him that the next report should have content.

He changed the date, submitted the same report, with, again, no data in it, which *The Oregonian* pointed out how clever it was and how much taxpayer money had been saved in that report, since all they did was change the date.

City Council, although they raked him over the coals, accepted his flawed JTTF agreement. I think one of the reasons was that because the City Attorney took pains to point out that we get federal funding and it somehow is linked to being in the JTTF agreement.

I since have understood that our -- no one on our City Council has any clearance, so they do not have any privy information at all about what the FBI is doing in our town, and I called yesterday and was informed by the mayor's office that the Mayor applied for clearance and was turned down.

So who is in charge in our town, a citizen has to ask themselves.

THE COURT: Ms. --

MS. ROBERTS: Is it our Mayor and City Council

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or is it Mike Reese who made a bid for mayor that was quickly aborted?

I'm also submitting --

THE COURT: Ms. Roberts, whatever you wish to submit, please give to my clerk right now; but I think I saw the time has expired.

MS. ROBERTS: I've seen you give extra time to other people.

THE COURT: All right. If you have little bit more time to wrap up your comments, please do.

MS. ROBERTS: I will.

THE COURT: But you know what? I need it focused on this settlement agreement. No other issues.

MS. ROBERTS: I understand that. But what I'm saying is, is I'm verifying their testimony. I took a lot of time to print this stuff out for you.

THE COURT: And I will read it. I will read it.

MS. ROBERTS: I'm submitting some testimony as -- but the bottom line is it doesn't matter what -- Albina Ministerial and Consult Hardesty both testified that citizens groups, informed groups, individuals get up and testify to City Council, they still do what is predetermined. It is corrupt. We don't -- we don't understand why everyone can testify against things and they still approve them.

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I'm also submitting several articles about Mike Reese promoting a gentleman who put up Nazi war plaques into -- he's now providing Bureau leadership training.

Here's an article about how he promoted a gentleman --

THE COURT: I will read your articles.

MS. ROBERTS: -- who sexually harassed people -- sexually harassed people, to actually a position -- demoted him to a position where he supervised somebody who sexually harassed. You're authorizing, through this agreement, for him to require -- I've heard different numbers of how many new employees he gets. So no matter how horrible their behavior has been, you're basically rewarding them with larger budget and more staff to mismanage, because that's -- they clearly mismanaged, and we clearly are unable to do anything about it.

You suggested to them that maybe we should go to the -- the City Auditor's, well, the City Auditor just went up against Mike Reese at the -- at the Portland Club, and she -- she got blasted for suggesting reforms to the police.

The Charter Review Commission I watched be destroyed because they suggested that the police needed to be reformed. They were immediately shut down, and I've got support articles for that, but I --

1 THE COURT: Would you please hand them to the
2 clerk, so I can read them.

3 MS. ROBERTS: I will.

4 And, also, I want to say that they arrest people
5 on high charges and then downgrade them so they don't have
6 rights to an attorney, which the ACLU is advising us in
7 their legal briefs this month.

8 But I also want to testify about watching
9 police, myself, take down a mentally ill person --

10 THE COURT: You're not being fair to the other
11 people.

12 MS. ROBERTS: -- in a City Council meeting -- in
13 a City Council meeting security took a mentally
14 incompetent woman down so hard that her shoes were left
15 where she had been. She was clearly mentally incompetent,
16 and they did it in front of a packed house. That's how
17 little respect they have for this -- you, Judge Simon.
18 Little respect for you and these proceedings that they
19 continue to behave, knowing that these proceedings are
20 coming up, that they would publicly take a mentally ill
21 woman down, in public, in chamber, on video, with no
22 repercussion.

23 THE COURT: Ms. Roberts, please. Thank you very
24 much, ma'am. I appreciate you coming here.

25 Ms. Caldwell.

1 MS. CALDWELL: Hi. Thank you for your time and
2 your patience. My name is Kelly Caldwell,
3 C-A-L-D-W-E-L-L. I've been active in Portland for the
4 last 12 or 13 years in terms of social justice, peace
5 activism, and providing direct assistance to very low
6 income folks and folks in need. And my general things I'd
7 want to touch on in my time is to say that I have to agree
8 that accountability -- I actually have had a lot of great
9 experiences with some wonderful officers, but I'm really
10 concerned that those wonderfuls who are not -- those
11 officers who are not wonderful, who are essentially
12 bullies with guns, are being allowed to do what they do
13 and are being kind of covered by the blue wall. It
14 happens all the time.

15 I've seen people tasered. I've seen people
16 thrown down on the street for jaywalking supposedly. And
17 I have -- as someone with an urban planning degree in a
18 public engagement professional type experience, I think
19 that the review and the community engagement is really
20 inadequate and the proposal in place for what would happen
21 next does not adequately address it as review and
22 engagement, does not address accountability, does not put
23 enough limitations on Tasers.

24 I don't know if you've ever seen anyone be
25 tasered, but even just watching it is horrible. I have

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1 seen the police taser someone simply for -- they weren't
2 acting violently.

3 And as someone who's spent -- said, oh, there's
4 a homeless person who's, you know, acting a little crazy
5 or who's counting out their items outside of a food
6 pantry, we shouldn't be in a situation where, you know,
7 church leaders are afraid to call the police because, yes,
8 they need some support, and, yes, there are mental health
9 issues, but what do you feel when you call the police on
10 someone and you see them abused? That's heartbreaking.
11 It's not going to be addressed by this system as it
12 stands. It needs to be more.

13 I can tell you that I've been in an Independent
14 Police Review, and my -- I was treated disrespectfully.
15 Once again, I was accused of being someone else, because I
16 was there in the aggregate -- advocate role.

17 And one of the things that concerns me is a lot
18 of these reports, if you want to file a complaint, can
19 only be done by the person. If that person is mentally
20 unstable or happens to be in jail because they've been
21 scooped up by the cops, no one can even file a report for
22 me. If I'm mentally incompetent and I've been harassed by
23 the police, no one can file that report for me in the
24 current status quo. I know that because I've been in the
25 Independent Police Review seeking to support people I've

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1 seen abused.

2 Once again, I believe that many of our officers
3 are wonderful human beings assisting and protecting those
4 that are not. I see police -- I'm a big fan of unions,
5 but the police union, I can't believe what they try to
6 pull off. You really -- we need your intervention, and we
7 need more than has been proposed. A settlement may not be
8 enough. We need a change of focus. We need a place where
9 we can actually maybe trust the police a little bit more,
10 and that involves more interaction in a less hostile
11 manner.

12 I'm very upset by the increased militarization
13 of the officers that I see on the street and their
14 willingness to intimidate people. It's not okay and it's
15 a pervasive problem, and I pray that you will take all
16 these sometimes wildly commented comments seriously and
17 know that we're here because it's getting worse and not
18 better, and we need your help. Thank you.

19 THE COURT: Thank you, Ms. Caldwell. I take all
20 the comments seriously.

(Section 9, Court Reporter Dennis Apodaca.)

THE COURT: Thank you. I take all of the comments seriously.

According to my list, there are some folks that have asked to testify, but I'm not sure they are here. I don't think they are here right now.

Is Nancy Newell here? I don't see a hand.

Herschel Soles.

Nikki Johnson submitted written testimony as well.

Joe Smith.

Kate Lore.

And if I'm missing you, just shout something.

Amy Krouskop. K-R-O-U-S-K-O-P.

Deborah Hall.

Connie Olson.

Donald Wolfe.

Nancy Howell.

All right. Mr. Steenson, yesterday you asked for a little bit more time. I have read the entirety, and I plan on re-reading the entirety of your 18-page submission. If you want an additional two minutes, you can have it, Mr. Steenson. Are you here?

MR. STEENSON: I'm here.

THE COURT: Do you want two minutes?

MR. STEENSON: Two minutes is not enough, but if that is all I have.

THE COURT: Then here is a better alternative, I think. I will keep the record open. I know there are some other folks that have asked for some additional time. If anyone wants an additional two minutes, I will do it, but I really do need to wrap this up this morning. What I will do, I will keep the record open up for one week. If anyone wants to submit any additional comments in writing -- by the way, this does not count the parties. We will talk separately about what we will do with the parties.

If any members of the public want to submit any additional comments, you may do so by filing them with the court, bringing them to my courtroom deputy, e-mailing them to my courtroom deputy by close of business a week from today, February 26th.

Mr. Steenson.

MR. STEENSON: What I want to emphasize is the community and the public was shut out of the settlement negotiations. Despite what the DOJ may have learned in its investigation and interviews, when it came to discussing the details, the remedies, the important part of what needs to be done, we were shut out.

All of my force recommendations, as I'm most

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familiar with those, were submitted repeatedly. I never received a response, where I specifically approached the DOJ about those, trying to get them in the agreement so the agreement has some teeth on force. I was told to go to the City. Well, the City, of course, doesn't want to talk to me about it. So it is the same story you have heard from repeated witnesses about the inability to get to the City, and if you try to get to the City, they don't listen.

The concern I have expressed in some written materials is the vagaries in the agreement are such that -- I am going to use the expert's testimony from yesterday. He said: In the spirit of the agreement, there is lots of room for the Bureau, under the agreement, to exercise options and do things; lots of alternatives.

That's precisely the problem. Because it is not definite, they can choose to do nothing, and that's a serious problem.

Also on remedies, under the current system, you are never going to see this case again if you sign off on this agreement, because I do not believe the DOJ is going to hold or find that the City is in substantial noncompliance. I think it will be easy for the City to convince the DOJ of that.

The DOJ showed no initiative at all when we

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complained about the terms of the settlement agreement in going back to the City and negotiate something that's fair. So this is the last time you are going to hear this case.

THE COURT: I don't think you are right, sir, but we will see how it develops.

MR. STEENSON: There is nothing in the agreement that brings anything back to Your Honor, unless there is a complaint presumably by the DOJ about non-compliance.

THE COURT: I understand. I have been listening to what has been said yesterday eight and a half hours yesterday and three and a half hours today. I think that's a fair point, and we will talk about it more with the parties.

MR. STEENSON: One other point came out yesterday for the first time, and it has not expressly said so in the proposed agreement, but I think it is a response to criticisms by me and others in writing that the monitor, this COCL person really isn't a monitor. First, it is not independent; and secondly, you don't hear from the person.

THE COURT: I hear that point loud and clear as well.

MR. STEENSON: So yesterday for the first time, the DOJ announces: Well, we are the monitor.

Well, wait a second. It is a party. How can a party have any independence in monitoring the agreement? That makes no sense. The monitor needs to be independent, somebody outside the system, to monitor the system and make decisions about what is going on, not a party who has as much interest in settling the case and avoiding trial as doing what this public wants.

THE COURT: I understand your position, sir. I appreciate it. If you wish to submit more in writing, I will read it. I understand your position, and you make some valid points.

All right. Let me ask, Ms. Hardesty, I got a request that you wanted some additional time. If you want, you can submit any additional comments in writing within one week from today. If you really need two minutes right now, you can have it.

MS. HARDESTY: Thank you, sir. I would appreciate the two minutes, but I will also take up your offer to send an additional written submission.

THE COURT: You can have both.

MS. HARDESTY: Your Honor, I appreciate your patience and your diligence in reviewing everything. I wanted to very quickly bring some information to the Court's attention in regard to the DOJ expert who alluded to the fact that racial profiling numbers in Portland, we

don't track that data, so, therefore, we didn't have good information. That is actually incorrect.

In 2006, Police Chief Rosie Sizer released the first traffic and pedestrian stop data. The data had been released every single year up until 2012. In 2012, the data was taken back because the DOJ process was taking place, and they were looking at how to refine the data. But since 2006, traffic and pediatrician data has been consistent.

If you are African-American, you are two times more likely to be stopped. If you are stopped, you are twice as likely to be searched. If you are searched, you are half as likely to have guns, drugs, and other paraphernalia as a white counterpart, if they happen to be stopped.

So I wanted to make sure that the Court understood that. I gave you a couple of pages out of this report, which was a community listening session process that I did under Mayor Tom Potter where we brought the community and police together to talk about what is the community's role in eliminating racial profiling and what is the police role in eliminating racial profiling.

So I want you to know we can work cooperatively together. It has happened in the past. But as you have heard, we don't have confidence in current police chief

and the current City Council to actually make those things happen.

The last thing I will say, because I know my time is up, we also don't have confidence in the U.S. Attorney's Office to actually hold Portland accountable for the settlement agreement. The reason is, the day Thomas Perez came back to Portland to tell us about the findings, Amanda Marshall runs in and goes, "It is so wonderful working with Portland Police," as if she was unaware we were there to hear about the patterns and practices of excessive force.

Thank you, sir.

THE COURT: Thank you, Ms. Hardesty. I appreciate that.

Mr. Handelman, I also note that you requested some additional time. Again, I appreciate reading what you write. If you would like to submit something within the next week, you are welcome to do. If you want two minutes now, you will have it.

MR. HANDELMAN: I will do both, Your Honor.

THE COURT: Okay.

MR. HANDELMAN: Dan Handelman with Portland Copwatch.

Yesterday, again, when we heard the expert testimony and the testimony from the DOJ, we didn't have

time to respond to that in our written comments.

Mr. Geissler mentioned that the timelines can be adjusted later, about the 21 days, for instance, for the CRC.

But just now, before this hearing, I asked, are you going to make it clear to the public which guidelines are able to be moved and which ones aren't? He said that's not going to happen. So that's why we asked Your Honor, and I am going to repeat it, to please get the parties -- at least if you are going to enter this in the way it is written, to tell us which ones are firm and which ones are not.

When we went to City Council, I asked them -- you talked about hearing the auditor on the radio. We asked them not to vote on those changes to IPR, because we thought there might be changes to the settlement agreement. They said: Well, you are usually asking us to make changes right now. Why are you asking us to slow down? We were asking them to slow down so we would have time to address you at the fairness hearing. But they were trying to rush things into place so there would be facts on the ground that would be harder to change later. This is, again, typical behavior by the City.

We feel that we don't have to wait six months before the COAB is assembled and starts to assess what's

going on when we already know what the problems are going to be. We told you what the problems are going to be. We don't want to wait that long. We don't want the City Council to change the City code again and frustrate members of the Citizens Review Committee, trying to go through the process in 21 days, only to have to change it down the line once it backfires because it doesn't work properly.

We appreciate that you are saying you are going to provide ongoing support/supervision. We agree with Mr. Steenson that the plaintiff should not be the monitor.

We are glad that you heard from the other parties this lawsuit in the last two days, which is the community.

We are sad to hear that this is unprecedented community input into a DOJ investigation, because I feel bad for the other cities. We have put a lot of input into this. The changes that were made between the two versions of the agreement that went to City Council were minimal.

So I appreciate your time, and we will follow up in writing.

THE COURT: Thank you very much, Mr. Handelman. I will get to you in a moment, Mr. Sutton.

Mary Eng, Ben Pickering, I have also received word that you would like additional time. You may have an

additional two minutes each.

MS. ENG: Good morning, Your Honor, and DOJ and City.

I want to draw attention to the loss of faith and confidence we have with the City of Portland with the hiring of Mary Claire Buckley, famous for her verbal abuse, misogynist, derogatory, sexual language. I think this is a great example of how the City doesn't have any risk management in their legal vulnerabilities. They don't have any respect for our intelligence.

I would like to move on to a bad referral from Cascadia to a malpracticing hospital. I witnessed a very severe security guard assault in an emergency room. I attempted to report it to John Edwards. I was threatened with arrest for attempting to report what I thought was a crime. I thought I was being a good citizen. These are the events happening in 2013.

If this agreement was getting underway in 2012, regardless of whether its inaction, all the sweet talking Reese is doing in Council should follow up with some action.

The officers who beat Benjamin Pickering are Karl Klundt. They are Cioeta, Jackson, Bryson. Birkinbine was on the coverup when he had come in and kind of smooth things over when Ben talked about his injuries.

He was denied medical care.

I would like to bring forward the name of Stuart Palmiter, a whistleblower who noticed Ben's extreme injuries and tried to assist him in getting medical help later on. He wanted someone to notice that there is a good officer on the force.

The forced drugging at OHSU failed to help for the traumatic brain injury necessities. There needs to be a lot of delicacy. Antipsychotics are inappropriate for TBI.

I would love to volunteer my time in any way if I can be of assistance to you. Thank you so much. I think everyone needs to read Foucault on insanity and also get a more cultural anthropological look when we are talking about mental illness and whatnot. We need more cultural sensitivity and translation.

THE COURT: Thank you, Ms. Eng. By the way, I will just mention, as difficult as these problems are before us, it is even more difficult to understand, in my opinion, what Michel Foucault says.

Mr. Pickering.

MR. PICKERING: As to the truth that everybody hasn't spoken here, I would like to say a few things. My mom and dad work with Pastor Michael Lowery. Mike used to train people in the war -- or in the service. My mom and

dad help build a soup kitchen to feed people off the street. Being involved there, in a community -- it was written down in a Red Cross book. I almost took my life, but the power line hit me off my back and a roll fire right behind me, and I saved a lady standing there. The gratitude of that, being a hero of a small community, but being there and also praying for our loved ones and our soldiers that are fighting in the war and our soldiers on the streets fighting for what is right. Yeah, grats. for that.

But I'm here, and I want to say a few things. From what has happened to me -- when my name got brought up -- my name, Benjamin Harvey Pickering, was brought over a scanner, and someone was concerned, that didn't get brought up, that I was in the a hero in a Red Cross book. Look it up; you will see my name in the Red Cross book.

But the things I deal with, I see like the task force team hold the key to the City, where they have to open an entry for terrorist attacks, bombers and patrolmen, which is the deputies or the sheriffs on the freeways and the people doing stops for residential -- speeding -- and doing their job in the City. People are getting scared.

You know, you say that there are terrorist attacks and this and that, and there is people living on

1 the street, which they have no weapon to defend themselves
2 against an attacker when they are out there, and there's
3 no place to go. They are scared and raped and things that
4 are violent on the street.

5 There are things that matter, which, you know,
6 for me, I believe in what is true and what is right. You
7 know, when I was in school, you look at the flag and you
8 say the Pledge of Allegiance. You know, this land was
9 made for you and me, and I think everybody in society is
10 on U.S.A. soil -- everybody in the human race and U.S.A.

11 God bless America. I hope everybody does what's
12 right and understands somebody. Where is the love?

13 THE COURT: Mr. Pickering, this is a beautiful
14 photo. Do you want it back or do you want me to keep it
15 in the file?

16 MR. PICKERING: I was going to present to you.
17 That's my care provider. He is five to six months right
18 now. He is two now. He is living on a farm. He is my
19 seeing-eye dog, because I have been blind. I have been
20 with this disabled blindness out of my side. I cannot
21 see -- I had to learn to grow without seeing out of my
22 left side.

23 THE COURT: Do you want the photograph back or
24 keep it in the file?

25 MR. PICKERING: Keep it. Thank you.

1 THE COURT: Thank you.

2 All right. Mr. Sutton, I heard that you had
3 another point or two.

4 Mr. Sutton, you will have the distinction of
5 being the last member of the public to testify. I welcome
6 your comments. Two minutes, please, sir.

7 MR. SUTTON: Thank you, Your Honor. It is to
8 answer your question, and I do have a definite answer for
9 it.

10 Yesterday I went to talk to all of the four -- I
11 mentioned to all of the four commissioners what my
12 thoughts were about a space being used in back of the old
13 Washington High School. I didn't get to the mayor's
14 office before it was closed. It was closed. They are
15 determining what to do with R2D2 today in the City
16 Council.

17 If you have ever been by 12th Avenue, you go by
18 the backfield of Washington High School, which is from
19 12th to 14th -- actually 12th to 13th. It cuts through.
20 The other is sold to a condominium company to develop into
21 a condominium.

22 But the field is from Stark to Alder Street, and
23 it would house many, many homeless people. There are
24 people that are camped out at Saint Francis Church and
25 then people camped around there. You will see maybe a

1 couple of neighbors run their dog on the field. The field
2 itself is owned by the City of Portland. It is for the
3 Park Bureau. That's a commissioner's office. I heard
4 something about the City Council not always being on the
5 up and up. I hope that isn't true.

6 As I see it, there is no reason why this field
7 in back of Washington High School can't be used to take on
8 hundreds of homeless people. This happened in 1998
9 katty-corner to Saint Patrick's Church, and it worked out
10 well for Dignity Village. I just wanted to suggest that.

11 THE COURT: Thank you very much. I appreciate
12 your comments.

13 MR. SUTTON: As far as doing something about the
14 homeless people, their mistreatment with the police, well,
15 hearing this other lady that spoke about the situation,
16 violence should be applied to those people that do that.

17 Thank you, sir. Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Sutton. I appreciate
19 it.

20 Counsel, let me suggest the following process to
21 you all and then get your feedback on it. We have heard a
22 lot of perspectives, views, ideas from the public at this
23 fairness hearing in the last day and a half. As you have
24 heard, I am going to allow one week to remain open for any
25 additional written comments to come in from the public,

1 and we will provide you with those if we receive them.

2 In addition, I do expect that by March 3rd, we
3 should have the transcript from yesterday's proceeding and
4 today's proceeding available to everyone. Then as you
5 know, under the schedule that you all proposed, you asked
6 to submit post-hearing written comments or briefing by
7 March 11th. That's fine.

8 Here is my suggestion: I think rather than
9 hearing any type of further argument from the parties
10 today, although if you really want to say something, you
11 know that I'm not too hard to let people do that. But my
12 suggestion is that we all digest what we have heard in the
13 past day and a half, and then I would like, after you have
14 all thought about it, if the parties think it is
15 appropriate, to propose any amendments to the proposed
16 settlement agreement. You can all do that, and you can
17 submit that, if you wish.

18 And by the way, I figured if there were to be a
19 proposed amendment to this proposed settlement agreement,
20 I don't think that would need additional fairness hearing.
21 I think it will simply reflect what we have done or talked
22 about at the hearing.

23 Then what I would like you to do is allow you to
24 submit whatever written comments you want by March 11th,
25 whether it be either a proposed amendment to the

1 settlement agreement, and why you think the proposed
2 amendments should be accepted, or if you believe, after
3 hearing the testimony, that you don't need a proposed
4 amendment to the settlement agreement, but you simply wish
5 to stand on the existing proposed settlement agreement,
6 you can articulate in your March 11 responses why you
7 believe that.

8 Also, let me tell you that I expect within one
9 week from today to submit to you all, and I will post this
10 on the CM/ECF, a court electronic document. I have some
11 questions about the settlement agreement based upon what
12 we have heard. I will put all of those questions to you
13 in writing, and you will have that by February 26th.

14 Then you can incorporate whatever responses you
15 wish to those questions when you file your papers, with or
16 without a proposed amendment, on March 11th. Then I
17 suggest, and I would like to hear what you think of this
18 too, that we all get back together for one final public
19 hearing, not where I would take testimony from the public,
20 but where I would hear final oral argument from all four
21 parties as to whether I should or should not accept the
22 proposed settlement agreement with or without a proposed
23 amendment and also under what circumstances, if I do
24 accept the settlement agreement, as amended or not, under
25 what conditions I should then conditionally dismiss the

1 case and under what conditions I should retain
2 jurisdiction.

3 I have got some ideas on those as well. They
4 are formulating in my mind. I will put those in the form
5 of questions to you within one week of today. But then
6 you can respond in writing by the 11th, and then we will
7 all get back together at your convenience in a week or two
8 or three or so after that.

9 What do you all think of that approach? Let me
10 start first plaintiff, then City, then PPA, and then AMA.

11 MS. BROWN: Your Honor, could we have a brief
12 recess to talk amongst our counsel?

13 THE COURT: Five minutes. We will be in recess
14 for five minutes.

15 MS. BROWN: Thank you very much.

16 (Recess.)

17 THE COURT: All right. Let's go back on the
18 record.

19 Ms. Brown.

20 MS. BROWN: Your Honor, yes, we don't have a
21 problem with the Court's proposed schedule and appreciate
22 the Court inviting questions. We would like to, however,
23 note that, although the Court wouldn't require any
24 additional fairness hearing for amendment, that would be
25 required to go back through the City Council for vote.

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1 THE COURT: I understand.

2 MS. BROWN: So I just wanted to make the Court
3 aware of that.

4 THE COURT: I'm very much aware of that.

5 MS. BROWN: We also want to provide some brief
6 closing, particularly to the community.

7 THE COURT: Okay. Before I do that, any other
8 comments on my procedures from the parties?

9 From the City?

10 MS. OSOINACH: Your Honor, like the Department
11 of Justice, the schedule you laid out, those dates work
12 for us. We are happy that you will be giving the parties
13 an opportunity to comment directly to your questions.

14 In commenting about your suggestion that there
15 might be an opportunity for amendments to this agreement
16 and that you seem to be encouraging that, from the City's
17 perspective, there are a number of legal and practical
18 problems with that approach, and I think we will be happy
19 to brief that further.

20 I just wanted to note that we all took very
21 seriously this Court's admonition a year ago to mediate
22 with the parties that are at this proceeding today, and we
23 produced a collaborative agreement and a memorandum of
24 understanding that resolved at least the concerns that
25 were expressed by these parties and so --

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1 THE COURT: Has that memorandum of understanding
2 and collaborative agreement been produced to the Court?

3 MS. OSOINACH: Yes, it has, Your Honor.

4 THE COURT: Which docket number?

5 MS. OSOINACH: I know that both PPA and AMA
6 filed that. It is probably four or five numbers below.

7 MR. GEISLER: Your Honor, No. 54 is the notice
8 of withdrawal of objection from Mr. Karia.

9 THE COURT: I read that. That includes their
10 memoranda. The collaborative agreement is No. 55 for
11 Ms. Albies. That includes as Exhibit A the agreement
12 itself.

13 Thank you.

14 All right. I do understand all of the different
15 pieces and how they fit together and how everything is
16 connected to everything. I do understand that.

17 All right. Any further comments on the
18 procedures, the processes, or the timeline I proposed from
19 the Portland Police Association?

20 MR. KARIA: Thank you, Your Honor. We are fine
21 with the proposed schedule that you have provided to us,
22 and we thank you for the time to further consider the
23 comments that we have heard so far in the past two days.

24 PPA also shares the concerns raised by the City
25 with respect to the legal and practical implications of

1 walking down a road of amendments, but it is something we
2 will, of course, duly consider.

3 THE COURT: From the AMA Coalition.

4 MS. ALBIES: Yes, Your Honor. Thank you. We
5 also, on behalf of our clients and the community that was
6 here, reiterate the gratitude to the Court for your
7 willingness to hear from the community. We truly
8 appreciate that.

9 I understand the City and the PPA have expressed
10 their concerns, and I think the DOJ as well has concerns
11 about the legality of proposed amendments. But as a
12 matter of clarification for the AMA Coalition's position,
13 when you said "proposed amendments," you were envisioning
14 that as a joint proposal from all the parties, correct, or
15 would you be willing -- or are you thinking that you would
16 hear proposed amendments?

17 THE COURT: I don't have the legal authority to
18 require any amendments. My only authority is to approve
19 or to disapprove. I would say it is not common, but it is
20 not uncommon or unheard of, after a fairness hearing, for
21 the parties to hear comments and then decide to submit a
22 proposed stipulated amendment agreement, and that's what
23 will be before me for approval or disapproval, if that
24 were to happen.

25 Let's assume that all four parties were to agree

1 that the proposed amendments should be accepted, as well
2 as the original agreement, an amended agreement, if you
3 will, and I would consider that in deciding whether to
4 approve or disapprove.

5 It is also theoretically possible that perhaps
6 the United States and the City might have a proposed
7 amendment that they urge on the Court that might be
8 objected to by either the AMA Coalition or the PPA, and
9 certainly I would listen to the parties and their
10 objections before making any decisions.

11 And, of course, it is possible that all four
12 parties may say, no, we should not have any additional
13 formal amendments but should live with the settlement
14 agreement as proposed, in light of the other memorandum of
15 understanding that has been already introduced in the
16 record, and I would consider those arguments.

17 Frankly, I am running through the various
18 options before the Court, and I would consider any option
19 and consider anyone's position and argument with respect
20 to any options presented.

21 MS. ALBIES: Thank you, Your Honor. I wanted to
22 get that clarification. Given that the AMA Coalition
23 agreement with the City and the DOJ was not to object to
24 the settlement agreement, but continuing to push for
25 changes that it thought were necessary, as we have heard a

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1 great deal of testimony here. I think it was reiterated
2 by many community members as well.

3 THE COURT: Exactly. And as you will see in my
4 questions, but I really want to formulate them in writing
5 and have some time to think about them. But I will make
6 them available on the court docket sheet, so they will be
7 available to the parties and the public. I will try to do
8 it one week from today, but I also want to benefit from
9 whatever written submissions may come in within the next
10 week.

11 I also think that if I were to accept a
12 settlement agreement, either as currently drafted or as
13 amended, putting that issue aside, the parties are asking
14 me to retain jurisdiction, and I have certain ideas and
15 certain questions about the terms and conditions under
16 which I would retain jurisdiction. My plan is to share
17 those thoughts with you all in my written questions so you
18 can comment on whether you think those are appropriate,
19 inappropriate, good ideas, bad ideas, and why.

20 All right. Does anyone else besides the
21 United States wish to present final closing testimony at
22 this fairness hearing? City?

23 MS. OSOINACH: No, Your Honor.

24 THE COURT: Portland Police Association?

25 MR. KARIA: No, Your Honor.

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1 THE COURT: AMA Coalition?

2 MS. ALBIES: No, Your Honor.

3 THE COURT: Either Ms. Brown, Ms. Jones, or
4 Mr. Geissler, I will give you the last word in this
5 fairness hearing. I appreciate all the input that I have
6 received from all members of the public.

7 Ms. Brown.

8 MS. BROWN: Thank you, Your Honor. Thank you,
9 members of the public and counsel, for being here. We
10 wanted to close by saying that we have heard you. We have
11 heard your long and suffering issues throughout this case,
12 whether it was from the beginning, when we started this
13 investigation, through our individual community
14 interviews, through our town halls, through our open
15 conference lines, and all the way through the last day and
16 a half, through the City Council proceedings that took
17 place before this, we have continued to listen, and we
18 will continue to listen. And we are not going away.

19 As the judge mentioned, this is a joint effort
20 between both the Civil Rights Division in Washington, D.C.
21 as well as the United States Attorney's Office. The
22 United States Attorney, both this United States Attorney,
23 Amanda Marshall, as well as the previous United States
24 Attorney, Dwight Holton, both saw that it was important to
25 have a local presence. So there is a local presence here.

I want to make sure you all understand that, along with myself, Bill Williams, who is also here as a supervisor and chief of the criminal division, we are here locally, and there is also a 1-800 hotline number that's available to everyone to reach out to D.C., and Michelle Jones and Jonas Geissler are available to continue to take your considerations and concerns in.

However, we are asking you to let us walk on this journey with you at this point. We understand that you have already been down a long road. We want to continue on this road with you. We ask you to consider, not only what we had to say in our opening presentation here yesterday, but we ask you to keep in mind what else we are going to present to the Court, as the Court mentioned, that we will have an opportunity to present to the Court further briefing.

We believe that we will be able to address many of the concerns that you have raised. As the judge said, this is an extensive settlement. It is thick. We understand that. We do hope to show you where are the specific areas that your concerns are raised and how we address those, because many of these matters in our settlement agreement came directly from members of the public. Creative, innovative ideas came directly from members of the public, and we understand that it can get

lost in the 79 pages of writing. So we do hope to address all the concerns that you have raised.

However, we also want to agree with you that this is a first step. As Ann Brayfield said, this is the first step. We couldn't agree with that more. We understand that this settlement agreement is not the end of the case. Just because the Court doesn't have a court-enforced monitor, that doesn't mean that this is the end of the case for us.

The DOJ handles these cases nationwide, and we have seen police practices across the country. This is part of our work. So we do want to continue to work with you. This is just the beginning, and we acknowledge that.

We thank you very much for your time.

THE COURT: Thank you very much, Ms. Brown.

MS. ALBIES: Your Honor, I apologize. May I just make a brief statement?

THE COURT: Two minutes.

MS. ALBIES: I do realize my clients are probably going: Why didn't she say this?

THE COURT: Two minutes.

MS. ALBIES: It will probably take less than two minutes.

I wanted to respond. Ms. Brown had said that the DOJ has heard everybody for the last day and a half

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and throughout this process. We do appreciate that the DOJ has been listening, but what we have heard from the community is that they don't feel like they have been heard, and they don't feel like they have been listened to.

On behalf of the AMA Coalition who participated in the mediation and ended up agreeing not to object to the settlement agreement, but still maintains that there are tremendous concerns about it, as mentioned earlier, have been reiterated by the community over and over again.

I do think that the parties need to take seriously there is room for improvement and that the opportunity to do this is right now. I just want to stress that for all the parties, because I think that is a very important point to make.

THE COURT: Thank you, Ms. Albies. I appreciate that.

Let me ask counsel, what looks better for you? I would like to have an in-court hearing where I make a final decision. I will hear final argument, and then I will make my final decision.

How does either Friday, March 21st, or Monday and Tuesday, March 24th and 25th, look for you all?

Friday, the 21st, is probably my first choice. I can do all three of those.

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MR. PICKERING: Can I have something to say?

THE COURT: No, sir, not right now.

MR. GEISSLER: With the Court's indulgence for a moment.

THE COURT: Of course.

Mr. Pickering, I didn't mean to cut you off, but I have ended the public testimony.

MR. PICKERING: Okay.

THE COURT: Thank you.

If none of those dates work, you can propose something else. Do you want to propose a different date?

MR. GEISSLER: I beg your pardon, Your Honor. Due to childcare arrangements, of all things, I would appreciate the 24th or the 25th.

THE COURT: That's fine. Any one of those three, we will make work. As between the 24th and 25th, any preferences?

MR. GEISSLER: 24th.

THE COURT: Monday, the 24th of March. Does that work for everyone else?

MS. OSOINACH: It works for the City, Your Honor.

MR. KARIA: And for the PPA.

MS. ALBIES: It works for AMA Coalition.

THE COURT: I have various matters scheduled

1 that day, but I will try to work around your needs. Do
2 you prefer morning or afternoon?

3 MR. GEISSLER: Morning, Your Honor.

4 THE COURT: Will 9:00 a.m. work for everyone?

5 MR. GEISSLER: Yes, Your Honor.

6 THE COURT: All right.

7 MS. ALBIES: Your Honor, if it is not too much
8 of an inconvenience, I prefer the afternoon. I have a
9 wedding out of town that weekend.

10 THE COURT: Mary, we have a 1:30 oral argument
11 in another matter. You can move that.

12 MS. ALBIES: Your Honor, I wanted to make sure
13 the D.C. folks can get out. I will get there.

14 THE COURT: So we are going to keep it at
15 9:00 a.m. then?

16 MS. ALBIES: That will work.

17 THE COURT: You will be back from the wedding
18 Sunday night; you will just be tired in the morning.

19 MS. ALBIES: Yes.

20 THE COURT: Next hearing is Monday, March 24th,
21 9:00 a.m. in this courtroom. I will send out a minute
22 order later today with a schedule, but it will be as
23 follows:

24 Any member of the public who wishes to submit
25 additional or further written comments on the proposed

1 settlement agreement, you have until the end of the day
2 February 26th. I will try to get to everyone my written
3 questions by Friday, February 28th. Any post-hearing
4 further written submissions from the parties of any sort
5 are due March 11th, close of business or close of the day.
6 Final oral argument on the proposed settlement agreement,
7 March 24th, 9:00 a.m. in this courtroom.

8 Anything else we need to address in this
9 hearing? First, from the Government?

10 MR. GEISSLER: Nothing more, Your Honor. Thank
11 you.

12 THE COURT: From the City?

13 MS. OSOINACH: Nothing more, Your Honor. Thank
14 you.

15 THE COURT: From Portland Police Association?

16 MR. KARIA: Nothing more. Thank you.

17 THE COURT: From AMA Coalition?

18 MS. ALBIES: No. Thank you, Your Honor.

19 THE COURT: All right. I thank all counsel for
20 their diligence, their excellent oral and written
21 contributions to this difficult and important process. I
22 thank all members from the public, both for your patience
23 and for your insightful written and oral comments in this
24 day and a half. We are in recess.

25 (Recess.)

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C E R T I F I C A T E

1 UNITED STATES OF AMERICA,)
2)
3 Plaintiff,) Case No. 3:12-CV-02265-SI
4)
5 v.)
6)
7 THE CITY OF PORTLAND,)
8)
9 Defendant.)
10 _____)

11 I certify, by signing below, that the foregoing
12 is a correct transcript of the record of proceedings in
13 the above-entitled cause. A transcript without an
14 original signature, conformed signature or digitally
15 signed signature is not certified.

16 Dated this 28th day of February, 2014.

17 /s/ Dennis W. Apodaca
18 DENNIS W. APODACA, RDR, RMR, FCRR, CRR
19 Official Court Reporter

20 and

21 /s/ Jill Erwin
22 JILL ERWIN, RDR, RMR, CSR, CRR
23 Official Court Reporter
24
25

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